TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~252.~~ 5-6

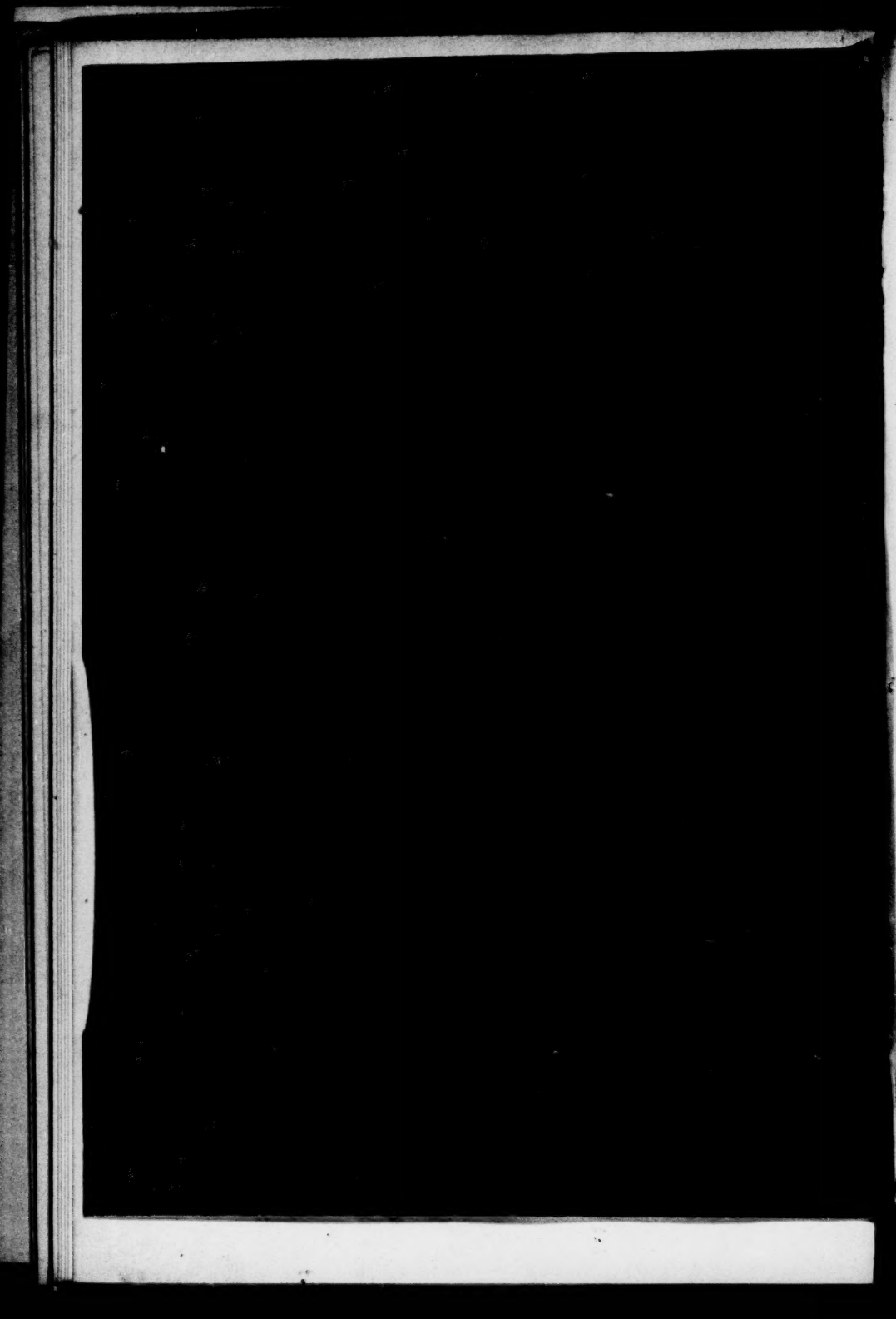
DANIEL R. BRANT, APPELLANT,

vs.

THE VIRGINIA COAL AND IRON COMPANY AND JANE SINCLAIR.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

FILED SEPTEMBER 19, 1874.



SUPREME COURT OF THE UNITED STATES.

No. 252.

DANIEL R. BRANT, APPELLANT,

vs.

THE VIRGINIA COAL AND IRON COMPANY AND JANE SINCLAIR.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

INDEX.

	Original.	Print.
Bill	1	1
Summons	68	31
Answer	71	33
Decree	117	51
Appeal	118	51
Deposition of Alexander Sinclair	126	55
Robert Sinclair	131	56
Hector Sinclair	135	58
Elisha D. McRobies	144	62
Daniel R. Brant	155	66
Hector Sinclair	171	73
William Pierce	173	74
Patrick Hamills	182	78
William Abernathys	192	82
Robert White	200	85
Alexander Kalbaugh	211	90
George G. Tarker	212	91
William Abernethy	214	91
Clerk's certificate	221	94
Errors assigned	222	95

1 UNITED STATES OF AMERICA,
District of West Virginia, to wit:

Pleas before the circuit court of the United States for the district of West Virginia, at Parkersburg, on Thursday, the 8th day of January, 1874.

Be it remembered that heretofore, to wit, on the 26th day of September, 1870, came Daniel R. Brant, by Messrs. John J. McKinnon and George W. Brandt, his solicitors, and filed in the clerk's office of said circuit court his bill in chancery against Jane Sinclair and the Virginia Coal & Iron Company, which bill is in the words and figures following, to wit:

Bill.

In chancery. In the circuit court of the United and district of West Virginia. for the 4th circuit

To the honorable judges of said court in chancery sitting:

Your orator, Daniel R. Brant, who is a citizen of the State of Illinois and a resident of the City of Chicago, brings this his bill against Jane Sinclair, who is a citizen of the State of West Virginia and a resident of said district, and the Virginia Coal and Iron Company, a corporation created and existing under and by virtue of the laws of the State
2 of West Virginia, and having its officers and place of business in the district aforesaid. And thereupon your orator complains and says—

1st. That he is the owner in fee, and rightfully and justly entitled to the possession, rents, issue, and profits of an undivided seven-eighth part of all and singular the following-described premises, situate, lying, and being in the late county of Hampshire, now the county of Mineral, in the said State of West Virginia, in said district; which is to say, the tract of land commonly called and known as the Sinclair farm, containing one hundred and ten acres, more or less, lying near Piedmont, a short distance above Pine-Swamp Run, and about three-quarters of a mile from the junction of said run with the north branch of the Potomac River, and adjoining the lands of George G. Tasker, Isaac Kalbaugh, the Hampshire Mining Company, and others.

2d. And your orator further showeth unto your honors that said premises are underlaid with a deep vein of superior bituminous coal, and of the value of about $100,000.

3d. And your orator further showeth unto your honors that said premises are now wrongfully and fraudulently in the possession
3 of the defendant The Virginia Coal and Iron Company aforesaid, who unjustly withholds the same, and the rents, issues, and profits thereof from your orator, and falsely and fraudulently pretends and claims to be the owner thereof and entitled to the rents, issues, and profits arising therefrom, to the exclusion of your orator.

4th. And your orator further showeth unto your honors that he is informed and believes, and upon his information and belief states and charges that said defendant The Virginia Coal and Iron Company aforesaid, in disregard of the rights of your orator, and to wrong and injure your orator in the premises, is now mining and excavating, and arranging and making extensive preparations to mine and excavate the said vein of coal, with a view to sell and dispose of the same and convert the proceeds thereof to its own use, and your orator greatly fears that said

defendant will so do unless enjoined and restrained therefrom by the injunction of this honorable court, which injunction is here sought.

5th. And your orator further showeth unto your honors, upon his information and belief, and so states and charges the fact to be, that said defendant, The Virginia Coal and Iron Company, is wholly and hopelessly insolvent and irresponsible, and that unless the said defend-
4 ant be enjoined and restrained as hereinafter prayed, your orator will, by reason of the premises, suffer and sustain great and irreparable loss and injury.

6th. And your orator further showeth unto your honors that heretofore and on or about the 14th day of February, 1831, one Robert Sinclair was the owner in fee and possessed of all the said premises, with the appurtenances thereunto belonging.

7th. And your orator further showeth unto your honors that so being the owner and possessed thereof, the said Robert Sinclair, on the said day and year, made his last will and testament in writing, wherein and whereby the said Robert Sinclair, among other things, gave and bequeathed to his wife, Nancy Sinclair, all his estate, both real and personal, which is to say, all his lands, cattle, horses, sheep, farming-utensils, household and kitchen furniture, with everything that he possessed, to have and to hold during her life, and to do with as she saw proper before her death, as by the said will, when produced, will more fully appear, and to which will, or a copy thereof, your orator prays leave to refer, which copy of said will is in the words following, to wit:

"*Copy of will.*

"By the grace of God, amen. I, Robert Sinclair, senr., of Hamp-
5 shire Co., State of Virginia, farmer, being weak of body, yet of a sound mind and memery—thanks be to Almighty God for the same—do make and ordain this my last will and testament. Revoking all others made by me, I do make this my last will and testament in the manner and form following, viz:

"First of all I give and bequeath to my beloved wife, Nancy Sinclair, all my estate, both real and personal, that is to say, all my lands, cattle, horses, hogs, sheep, farming-utensils, household and kitchen furniture, with everything that I possess, to have and to hold during her life, and to do with as she sees propper, before her death, except that my son Hugh Sinclair is to have a legacy of one dollar, my son Daniel is have one dollar, my daughter Margarah King to have one dollar, my son Alexander Sinclair one dollar, my son Robt. to have one dollar, my son Hector to have one dollar, my daughter Jane to have one dollar, & my daughter Nancy to have one dollar, when my wife Nancy can make it convenient to pay said legacies. This my last will and testament I make in the presence of the witnesses who hereafter set their names, and set my hand and seal thereto this 14th of Feb., 1831.

"ROBT. his + mark. SINCLAIR. [SEAL.]

"Attest:
"WILLIAM ABERNATHY.
"THOMAS ABERNATHY.
"JOHN JUNKINS.

6 "At a court held for Hampshire County, the 18th day of April, 1831, this last will and testament of Robert Sinclair, decd., was

presented in court, proven by the oaths of Thomas Abernathy and John Junkins, witnesses thereto, and ordered to be recorded, and, on the motion of Nancy Sinclair, who made oath according to law, letters of administration of the estate of the said Robert with the will aforesaid annexed, is granted, her giving security; whereupon she, with Samuel Cockerill, her security, entered into & acknowledged a bond in the penalty of fifteen hundred dollars, conditioned for the due & faithful administration of the said decedent's estate.

"Teste:

"JOHN B. WHITE, *C. H. C.*

"STATE OF WEST VIRGINIA,
"*Hampshire County, ss:*

"I, James Parsons, recorder of Hampshire County, West Virginia, certify that the foregoing is a true copy of the will of Robt. Sinclair & the certificate thereto annexed, as recorded in my office, in will-book No. 9, page 373, &c.

"Given under my hand and official seal, in the town of Romney, this 10th day of Sept., 1872.

RECORDER HAMPSHIRE COUNTY, WEST VIRGINIA.

"JAMES PARSONS,
"*Recorder H. Co., W. Va.*"

7 8th. And your orator further showeth unto your honors that said Robert Sinclair during his life-time was without education and wholly unable to read or write.

9th. And your orator further showeth unto your honors that, so being uneducated and unable to read or write, the said Robert Sinclair procured one John Junkins, a school-master, then in the neighborhood of his residence, to prepare his said last will and testament.

10th. And your orator further showeth unto your honors that said John Junkins, at the instance of said Robert Sinclair, did prepare the said hereinbefore mentioned last will and testament of said Robert Sinclair.

11th. And your orator further showeth unto your honors that, at the time he prepared the said last will and testament, the said John Junkins had no legal education or knowledge whatever, and was wholly unacquainted with the preparation and construction of wills and testaments.

12th. And your orator further showeth unto your honors that, on making said last will and testament, said Robert Sinclair intended to, and in fact did thereby, vest in his said wife, Nancy Sinclair, a life-estate only as to the said real property, without any power or authority to dispose of the said real property so devised for any greater or
8 longer than her own natural life, and that after her death his said real property should descend to his children and heirs at law.

13th. And your orator further showeth unto your honors that, afterwards, and on or about the 1st day of April, A. D. 1831, the said Robert Sinclair died seized and possessed of said premises.

14th. And your orator further showeth unto your honors, on or about the 18th day of April, A. D. 1831, the said last will and testament of said Robert Sinclair was duly proven and admitted to probate in the county court of Hampshire County aforesaid.

15th. And your orator further showeth unto your honors that, at the time of his death, the said Robert Sinclair left him surviving his widow,

the said Nancy Sinclair, and the following-named children his heirs at law: Hugh Sinclair, Daniel Sinclair, Robert Sinclair, Hector Sinclair, Alexander Sinclair, Nancy Sinclair, Jane Sinclair, and Margaret King, wife of Wesley King.

16th. And your orator further showeth unto your honors that, on or about the 20th day of July, A. D. 1839, the said Nancy Sinclair, by deed of that date, in consideration of $1,100 nominally expressed therein, sold and disposed of her life-estate in the said premises to the
9 corporation of the Union Potomac Company, incorporated by an act of the general assembly of the State of Virginia, "reserving to the said Nancy the use and occupancy thereof for agricultural purposes during her natural life, and in perpetuity one-eighth of an acre, including the grave of the said Robert Sinclair, together with all and singular the buildings, improvements, ways, waters, water-courses, rights, members, privileges, advantages, hereditaments, and appurtenances thereto belonging, or in any wise appertaining, and the reversion and reversions, rents, issues, and profits thereof, and all the estate, right, title, and interest, trust, property, claim, and demand whatsoever, at law and in equity, of the said Nancy Sinclair, of, in, and to the same," which deed, after the making and delivery thereof, was, on or about the 20th day of August, A. D. 1839, filed for record in the office of the recorder of deeds for said county of Hampshire, in book , at page , as by the said deed when produced will more fully appear, and to which deed, or a certified copy thereof, your orator for greater certainty prays leave to refer; which copy of said deed is in the words and figures following, to wit:

"*Copy of deed.—Nancy Sinclair to Union Potomac Company.*

"This indenture, made this 20th day of July, in the year eighteen hundred and thirty-nine, between Nancy Sinclair, of the county
10 of Hampshire and State of Virginia, of the one part, and the Union Potomac Company, incorporated by an act of the general assembly of the State of Virginia, of the other part, witnesseth, that for & in consideration of the price or sum of one thousand one hundred dollars by the said company to the said Nancy Sinclair in hand paid, at or before the sealing and delivery of these presents, the receipt of which she doth hereby acknowledge, the said Nancy Sinclair hath granted, bargained, and sold, aliened, enfeoffed, and conveyed, and by these doth grant, bargain, & sell, alien, enfeoff, release, convey, & confirm unto the corporation The Union Potomac Company aforesaid, its successors and assigns, the following-described tract or parcel of land on which the said Nancy Sinclair now resides, being the same which was conv*a*yed to the said Nancy by the last will & testament of her late husband, Robert Sinclair, and was conveyed to the said Robert by an indenture of bargain & sale by Robert Abernathy, and was conveyed to the said Robert Abernathy by a like deed of bargain & sale by the heirs of the late John Abernathy to whom the same was conveyed by letters-patent; all of which will more fully appear by reference to said patent and the several deeds of conveyance & will, as the beginning and metes and bounds thereof, as and for one hundred & ten (110)
11 acres, be the same more or less, reserving to the said Nancy the use & occupancy thereof for agricultural purposes during her natural life, and in perpetuity one-eighth of an acre, including the grave of the said Robert Sinclair, together with all and singular the buildings, improvements, ways, water-courses, rights, members, privileges, advantages, here-

ditaments, and appurtenances thereto belonging, or in any wise appertaining, and the reversion & reversions, rents, issues, and profits thereof, and all the estate, right, title & interest, trust, property, claim and demand whatsoever, at law and equity, of the said Nancy Sinclair, of, in, and to the same, to have and to hold the said tract or parcel of land, with the appurtenances thereto belonging, unto the corporation The Union Potomac Company aforesaid, its successors and assigns, to the only proper use of the said company, its successors and assigns, forever. And the said Nancy Sinclair, for herself and her heirs, doth hereby covenant, promise, and agree to and with the said company, its successors and assigns, that she and all persons claiming under her shall and will, from time to time, and at all times hereafter, at the reasonable request, cost, and charges of the said company, its successors or assigns, make and lawfully
12 execute, acknowledge, and deliver all and every such further and other deed, conveyance, & assurance in the law whatsoever, for the better and more fully conveying and assuring to the said company, its successors and assigns, the said premises, with the appurtenances hereinbefore described and mentioned, to be bargained and sold according to the true intent and meaning of the parties to these presents, as by the said company, its successors or assigns, by any of its or their counsel, learned in the law, shall be reasonably devised, advised, or required. And the said Nancy Sinclair hereby also covenants for herself and her heirs that she, the said Nancy Sinclair, her heirs and assigns, the said tract or parcel of land and premises above described and herein mentioned, to be granted, bargained, and sold, with the appurtenances, unto the said company, its successors & assigns, shall and will warrant and forever defend, by these presents, against the claims of all persons whatsoever. In testimony whereof the said Nancy Sinclair has hereunto set her hand and seal on the day and year first above written.

" NANCY her + mark. SINCLAIR. [SEAL.]

" Signed, sealed, & delivered in presence of—

" STATE OF VIRGINIA,
" *Hampshire County:*

" This 20th day of July, eighteen hundred and thirty-nine,
13 received from the Union Potomac Company the sum of one thousand one hundred dollars, being the consideration expressed to be paid in the aforegoing indenture.

" NANCY her + mark. SINCLAIR.

" Witness: R. DAVIS.

" HAMPSHIRE COUNTY, *ss:*

" We, Reuben Davis & John Sloan, justices of the peace for the county aforesaid, in the State of Virginia, do hereby certify that Nancy Sinclair, a party to a certain deed bearing date the 20th of July, 1839, and hereto annexed, personally appeared before us, in our county aforesaid, and acknowledged the same to be her act and deed, and desired us to certify the said acknowledgment to the clerk of the county court of Hampshire, in order that the said deed may be recorded.

" Given under our hands & seals this 20th day of July, 1839.

" JOHN SLOAN. [SEAL.]
" REUBEN DAVIS. [SEAL.]

"HAMPSHIRE COUNTY, *to wit:*

"Be it remembered that on the 20th day of August, 1839, this indenture was presented in the office &, with the certificate thereto annexed, admitted to record.

"Teste:

"JOHN B. WHITE, *C. C.*

"STATE OF WEST VIRGINIA,
"*Hampshire County, ss:*

14 "I, James Parsons, recorder of the county aforesaid, in the State of West Virginia, certify that the foregoing is a true copy of the deed & certificates as recorded in my office, in deed-book 34, page 134, &c.

{RECORDER HAMPSHIRE COUNTY, WEST VIRGINIA.} "Given under my hand & official seal, at the town of Romney, this 10th day of Sept., 1872.

"JAMES PARSONS,
"*Recorder H. Co., W. Va.*"

17th. And your orator further showeth unto your honors that, at the time of purchasing the said life-estate as aforesaid, the said Union Potomac Company had full knowledge of the existence of said vein of coal, and then and there made said purchase for the purpose and with a view to mine and excavate said coal, and sell and dispose thereof during the life-time of said Nancy Sinclair, and not for any other or different purpose whatever.

18th. And your orator further showeth unto your honors that, on or about the 20th day of July, A. D. 1839, aforesaid, the said Union Potomac Company, by one Duff Green, president of the Union Potomac Company, to secure the payment of said sum of $1,100 within twelve months after the said company should have been required to pay the same, with legal interest thereon, payable on the 20th day of
15 July in each and every year, as evidenced by its certain bond in writing of that date, conveyed the said premises, in mortgage, to the said Nancy Sinclair; which said mortgage, after the making and delivery thereof, was, on or about the 21st day of August, A. D. 1839, filed for record and recorded in the office of the recorder of deeds for said county of Hampshire, in book , at page , as by the said mortgage when produced will more fully appear, and to which mortgage or a certified copy of the record thereof your orator for greater certainty prays leave to refer; which copy of said mortgage is in the words and figures following, to wit:

"*Copy of mortgage Union Potomac Company to Nancy Sinclair.*

"This indenture, made this 20th day of July, eighteen hundred and thirty-nine, between the Union Potomac Company, incorporated by an act of the general assembly of the State of Virginia, of the one part, and Nancy Sinclair, of the State of Virginia, in the county of Hampshire, of the other part. Whereas the said Union Potomac Company, by its bond or obligation, duly executed, bearing date the 12th day of July, in the year eighteen hundred & thirty-nine, stands bound unto the said Nancy Sinclair, her executor, administrator, or assigns, in the sum of two thousand one hundred dollars, current money, with the con-

16 dition thereunder written for the payment of the sum *of the sum* of one thousand one hundred dollars within twelve months after the same shall have been demanded, with legal interest thereon, payable on the twentieth day of July in each & every year, as by the said bond and conditions may more fully appear: Now, this indenture witnesseth, that the said company, in consideration of the said debt or sum, & of one thousand one hundred dollars owing to the said Nancy Sinclair as aforesaid, and for the better securing the payment thereof, with legal interest, to the said Nancy Sinclair, her executors, administrators, or assigns, according to the conditions of the said bond or obligation, and also in consideration of the further sum of five dollars, current money, to the said Union Potomac Company in hand well & truly paid, at and before the sealing and delivery of these presents, the receipt of which the said Union Potomac Company doth hereby acknowledge, the said company hath granted, bargained, and sold, released & confirmed, and by these presents doth grant, bargain and sell, release and confirm unto the said Nancy Sinclair, her heirs and assigns, all that tract or parcel of land lying and being in the county of Hampshire aforesaid, which was on this 20th day of July, 1839, conveyed by deed of bargain and sale, by the said Nancy Sinclair, to the said Union Potomac Company, as and for one hundred
17 and ten acres, be the same more or less; to have and to hold the said tract, or parcel of land, and every part and parcel thereof, with the appurtenances thereunto belonging, to the said Nancy Sinclair, her heirs and assigns, to their only proper use and behoof; provided always, and it is the true intent and meaning of these presents, and of the said parties hereto, that if the said company, its successors, or assigns, doth and shall well & truly pay, or cause to be paid, unto the said Nancy Sinclair, executors, administrators, or assigns, the said full sum of one thousand one hundred dollars, current money, with the interest for the same, on or before the time specified and prescribed by the terms of the bond *a* obligation aforesaid, without any deduction abatement whatsoever, then and from thenceforth these presents & every matter and thing therein contained shall cease & be utterly null & void, anything herein to the contrary thereof in anywise notwithstanding. And this indenture further witnesseth that the Union Potomac Company aforesaid hath constituted and appointed, & by these presents doth constitute and appoint, John Sloan, esqr., of Hampshire County and the State of Virginia, to be its true & lawful attorney, with full power & author-
18 ity to appear for it, and in its name, and as its act & deed to acknowledge this indenture before any person or persons having authority by the laws of the State of Virginia to take the said acknowledgement in order that the same may be recorded according to law.

In witness whereof the Union Potomac Company aforesaid has caused this deed to be signed by Duff Green, its president, and its corporate seal to be hereunto affixed, on the day & year first above written.

[SEAL.] "DUFF GREEN,

"*President of the Union Potomac Company.*

"Signed, sealed, & delivered in the presence of—

"HAMPSHIRE COUNTY, *to wit:*

"Be it remembered that on the 20th day of August, 1839, this indenture was presented in the office, acknowledged by John Sloan, attorney in fact for the Union Potomac Company, & admitted to record.

"Teste:

"JOHN B. WHITE, *C. C.*

"STATE OF WEST VIRGINIA,
"*Hampshire County, ss:*

"I, James Parsons, recorder of Hampshire, West Virginia, certify that the foregoing is a true copy of the deed from the Union Potomac Co. to Nancy Sinclair, & the certificate thereto annexed, as recorded in my office, in deed-book 34, page 145, &c.

19 "Given under my hand & official seal, at the town of Romney, this 10th day of Sept., 1872.

{"RECORDER, HAMPSHIRE COUNTY, WEST VIRGINIA."} {"JAMES PARSONS, *Recorder H. Co., W. Va.*"}

19. And your orator further showeth unto your honors that, on or about the 24th day of August, A. D. 1854, the said Nancy Sinclair, by writing, under her hand and seal of that date, for a good and valuable consideration, sold and assigned the said bond and mortgage and all her right, title, and interest in and to the said premises to your orator and Hector Sinclair aforesaid, one of the heirs at law of said Robert Sinclair, deceased, and then and there also gave and delivered possession thereof to your orator and said Hector Sinclair, as she well and lawfully might.

20th. And your orator further showeth unto your honors that, on or about the 2d day of July, A. D. 1857, your orator and said Hector Sinclair, to enforce the condition of said bond, commenced a suit in the circuit court of Hampshire County aforesaid to foreclose the said mortgage, in which suit such proceedings were had that afterwards the interest of said Union Potomac Company in the said premises was *was*
20 directed by the said court to be sold, and in pursuance of which direction the same subsequently was sold to one Patrick Hammil, who, on or about the 3d day of July, A. D. 1866, received a deed therefor as purchaser at such sale; which deed, after the making and delivery thereof as aforesaid, was, on or about the 3d day of July, A. D. 1806, filed for record, and recorded in the office of the recorder of deeds for said county of Mineral, in book 1, at page 90, as by the said deed when produced, and the record of said proceedings had in said cause and now on file in the office of the clerk of said court, will more fully appear, and to which deed and the record of said proceedings, or authenticated copies thereof, your orator certainly prays leave to refer.

Which copy of said deed above referred to is in the words and figures following, to wit:

"*Copy of deed to Hammill.*

"This deed, made this 3rd day of July, 1866, between Robert White, a commissioner acting under and by virtue of the power and authority hereinafter recited, of the one part, and Patrick Hammill, of the other part. Whereas by a decree of the circuit court of Hampshire County, rendered on the day of April, 1858, in a cause in chancery in said court depending, wherein Hector Sinclair, &c., are complainants,
21 and the Union Potomac Company is defendant, it was among other things adjudged, ordered, and decreed that unless the defendant do, within 60 days after the date of this decree, pay to the complainants the amount in said decree set out, then James D. Armstrong and Robert White, who are appointed commissioners for the purpose, shall sell to the highest bidder, before some public tavern in the town of Peidmont, the lands in the bill and proceedings mentioned, upon the terms and after the advertisement required by said decree; and whereas said James D. Armstrong & Robert White, special commissioners as aforesaid, in *in* pursuance of said decree did advertise

and upon the 24 day of December, 1858, did sell the tract of land conveyed by Nancy Sinclair to the Union Potomac Company, containing 110 acres, more or less, at which sale said Patrick Hammill became the purchaser at the price of two thousand and thirty dollars, he being the highest bidder; and whereas by a decree rendered in said cause by said court the 13th day of April, 1859, the said court did confirm the said sale; and whereas by a decree rendered in said cause on the 16th day of April, 1860, it was among other things adjudged, ordered, and decreed that Robert White is appointed a commissioner to convey
22 unto said Patrick Hammill, upon the payment by him of all the purchase-money, by proper deed, said real estate purchased by him, and acknowledge the same for recordation; and whereas said Hammill has paid the said commissioner all the said purchase-money: Now this deed witnesseth, that, for and in consideration of the premises and of the sum of one dollar to him in hand paid, the said Robert White, commissioner as aforesaid, doth grant and convey to said Patrick Hammill the said tract of land, the same conveyed by Nancy Sinclair to the Union Potomac Company, containing 110 acres, more or less, lying near Peidmont, a short distance above Pine-Swamp Run, about ¾ of a mile from the junction of said run with the north branch of the Potomac, to have and to hold unto the said Patrick Hammill, his heirs and assigns, forever.

"Witnesseth the following signature and seal.

"ROBT. WHITE, [SEAL.]
"*Spl. Comr.*"

"STATE OF WEST VIRGINIA,
"*County of Hampshire, Township of Romney, to wit:*

"I, Daniel Mytinger, a justice of the peace in and for said township, county, and State, do hereby certify that Robert White, whose name is signed to the foregoing deed, bearing date on the 3rd day of
23 July, 1866, has acknowledged the same before me, in my township, county, and State aforesaid.

"Given under my hand this 3rd day of July, A. D. 1866.

"DANIEL MYTINGER,
"*Justice of Romney Township, Hampshire Co.*"

"MINERAL COUNTY, *to wit:*

"Be it remembered that on this 3rd day of July, 1866, that this deed, with the certificate thereto annexed, was presented in the recorder's office, and, being duly stamped, was admitted to record.

"Teste: "G. E. LEPS, *Recorder.*
"Copy. Teste: "J. I. BARRICK,
"*Recorder Mineral Co., W. Va.*"

The following is a copy of the record referred to in complainant's bill:

"*Copy of record referred to in complts. bill.*

"WEST VIRGINIA, *to wit:*

"In the late circuit court of Hampshire County, Virginia.

"HECTOR SINCLAIR & DANIEL R. BRANT, complts.
"*vs.*
"THE UNION POTOMAC COMPANY & NANCY Sinclair, defts. } In chancery.

"Be it known that heretofore, to wit, on the 2d day of July, 1857,

came Hector Sinclair & Daniel R. Brant, by their counsel, Messrs. Street & White, into the clerk's office of said court and sued out a summons in chancery against the Union Potomac Company & Nancy Sinclair, which, with the return and an affidavit endorsed thereon, is in these words, &c., viz:

24

"The Commonwealth of Virginia to the sheriff of Hampshire County, greeting:

"You are hereby commanded to Union Potomac Company & Nancy Sinclair to appear at the clerk's office of the circuit court of Hampshire County, at rules to be held in the said office on the first Monday in August next, to answer a bill in chancery exhibited against them by Hector Sinclair & Daniel R. Brant, and have then there this writ.

"Witness John B. White, clerk of our said court, at the court-house of said county, this 2d day of July, 1857, and in the 81st year of the Commonwealth.

"The sheriff will note the time and manner of serving this process.

"J. B. WHITE.

"*Return.*

"No inhabitant of this Commonwealth.

"DANL. SHOWEN, *Deputy*,
"For G. MILLISON.

"*Affidavit.*

"HAMPSHIRE COUNTY, *sct:*

"Danl. Showen made oath before me that he is informed & believes the within-named defendants do not reside in the State of Virginia, this 3d day of August, 1857.

"*Rules.*

"And at rules held in the clerk's office of the said court on the first Monday in August, 1857, came the said complainants, by their counsel, and filed their bill, which is in these words, &c., viz:

"*Bill.*

25

"HECTOR SINCLAIR AND DANIEL R. BRANT
"*vs.*
"UNION POTOMAC COMPANY & NANCY SINclair.

"To the honorable Richard Parker, judge of the circuit court of Hampshire County, in his charactor of chancellor:

"Your orators, Hector Sinclair & Daniel R. Brant, respectfully represent unto your honor—

"That the Union Potomac Company, a corporation, although incorporated by an act of the general assembly of Virginia, was composed of individuals who were not residents of this State, and had its office of business out of the limits of this Commonwealth for many years, as your

orators are informed and believe and so charge, has ceased to exercise its corporate functions, and has not maintained even a nominal existence by the election of officers according to the requirements of its charter. Whilst this company was doing business, and shortly after its incorporation, it purchased of one Nancy Sinclair a tract of valuable coal-land on the Allegany mountain for the sum of one thousand one hundred dollars. Mrs. Sinclair made a deed of conveyance to said company, and it at the same time executed a mortgage, to secure the purchase-money and the accruing interest, both of which were duly admitted to record in Hampshire County. Office-copies are made exhibits with this bill, marked A & B. This mortgage refers to an article of agreement, which is also made an exhibit C. It will be seen by reference to these papers that the said company bound itself to pay to the said
26 Nancy Sinclair the said sum of one thousand one hundred dollars within twelve months after it should be so required, and to pay the interest annually.

"Your orators charge that a demand or a requirement to pay could not for many years be made, because the said company has had, during that time, no place of business and no organization, and, in fact, no representive known to the said Nancy Sinclair or your orators on whom a demand for payment could be made. Your orators further submit in regard to this expression in the said mortgage that the word 'require' means nothing more and should be construed in the same way as bonds or notes in which the word 'demand' is used. Be that as it may, your orators charge that said principal sum has been demanded oftentimes, more than a year before the institution of this , and that no part of either the principal or interest has been paid, and the said principal sum is now again demanded. Your orators are the assignees of the bond given for the said purchase-money, as will more fully appear by reference to the said bond made an exhibit, D. The prayer therefore of this bill is that the said mortgage may be foreclosed and sale of the estate purchased by the said company be declared in order
27 to the payment of the said debt & interest and for any & all other & proper relief in the premises which may be just and proper. The said Union Potomac Company and the said Nancy Sinclair are made parties to this & required to answer, &c. May s'p'a issue, &c.

"STREET & WHITE,
"*For Compl'ts.*"

Exhibits A & B referred to in this record have heretofore been copied in this transcript.

Exhibit C is in the words following, to wit:

"EXHIBIT C.

"I have bought the tract of land on which Nancy Sinclair lives, being one hundred and ten acres, for eleven hundred dollars, five hundred to be paid when she makes the deed, and six hundred twelve months thereafter with interest, the payment of the whole to be secured by a mortgage with interest. She reserves the grave-yard and the right to live on or to rent the farm during her natural life free from disturbance. I am to have the right to mine coal or iron-ore, but in such manner as not injure the crop or do her or her tenants injury.

"February 19th, 1839.

"DUFF GREEN."

"GEORGE G. TASKER:

"For value recd. I do assign the within to Hector Sinclair & D. R. Brant.

"NANCY + SINCLAIR. [SEAL.]

"Teste:

"ROBERT S. DAVIS."

"EXHIBIT D.

"Know all men by these presents that the Union Potomac
28 Company, incorporated by an act of the general assembly of the State of Virginia, is held and firmly bound unto Nancy Sinclair in the full and just sum of twenty-one hundred dollars curren' money, to be paid to the said Nancy Sinclair or to her certain attorney, executor, administrator, or assigns; to which payment, well and truly to be made and done, the said company binds itself, its successors and assigns, firmly by these presents, sealed its corporate seal, and dated this twentieth day of July, in the year eighteen hundred and thirty-nine.

"The condition of the above obligation is such that if the above-bound company, its successors, or assigns, doth and shall well and truly pay, or cause to be paid, unto the above-named Nancy Sinclair, her executors, administrators, or assigns, the sum of one thousand one hundred dollars within twelve months after they shall have been required so to do, with legal interest thereon, payable on the twentieth day of July, in each and every year, then this obligation to be void; otherwise to remain in full force and virtue.

{ UNION POTOMAC } { COMPANY SEAL. }

"DUFF GREEN,
"*President of the Union Potomac Company.*
"JAMES W. McCULLOH,
"CHARLES F. MAYER,
"*A Committee of Directors.*"

"For value received I assign the within bond to Daniel R. Brant & Hector Sinclair.

"Witness my hand and seal Aug't 24, 1854.

"NANSSY + SINCLAIR. [SEAL.]

"Tes':

"R. DAVIS, *Clerk.*"

"*Or. publ'n.*

"And on motion of the complainants, by their counsel, it appearing by affidavit that the defendants were not residents of the State
29 of Virginia, order of publication was had in due form against them; which order, it appears, was duly completed, but has now been lost.

"And the cause was then continued from rules to rules, until at rules held in the clerk's office of said court on the first Monday in April, 1858, the same was set for hearing.

"And at a circuit court of said county continued & held on the 8th day of April, 1858, came the Union Potomac Company and filed its answer, which is as follows, viz:

"*Union P. Co.'s answer.*

"The answer of the Union Potomac Company to a bill of complaint exhibited against it in the circuit court of Hampshire County by Hector Sinclair and Daniel R. Brant.

"This respondent, making the usual reservations, for answer thereto,

or to so much thereof as he is advised it is material to answer, says that it admits the execution of the mortgage, bond, and agreement filed with the bill as Exhibits B, C, D; but it denies that it has ceased to exercise its corporate functions or has a mere nominal existence, as is charged in bill, or that it has failed to comply with the requirements of its charter, or has in any way lost any of its rights and powers under its charter. Respondent also denies the allegation in the bill that it has had no known representative on whom a demand, according to the pro-
30 visions of the mortgage, could be made. On the contrary, Duff Green, who was the agent of respondent that made the agreement with Nancy Sinclair, and, as its president, executed the said mortgage, is now, & and has ever since been, the president of said company, duly appointed according to the provisions of its charter.

"Respondent, for further answer, says that it is not true that any demand was ever made on it twelve months before the filing of the bill for the payment of the principal sum due, as respondent insists (by the provisions of the said mortgage) the said Nancy Sinclair was bound to do before seeking payment of the said principal sum; nor was any demand made at any time before the filing of the bill, as required by the mortgage, by any one legally authorized to make it, and the excuses set up in the bill for not making such demand are mere pretences for evading the clear and express requirements of the contracts. And respondent avers that so far from there being no one known on whom a demand could be made, that said Duff Green was publicly known to be the president and entrusted with the general management of its affairs, and was repeatedly, indeed, almost every year, and of late years several times in a year, in the county of Hampshire, engaged in the management of the lands of respondent, and in the transaction of business for this
31 respondent; without this, that, &c., respondent denies all fraud, &c., prays to be hence dismissed with his costs.

{ SEAL UNION P. CO. } "UNION POTOMAC COMPANY,
"By DUFF GREEN, *President.*

"HAMPSHIRE COUNTY, *to wit:*

"Duff Green, president of the Union Potomac Company, personally appeared before the subscriber, a justice of the peace in and for the county aforesaid, and made oath that the foregoing answer is true to the best of his knowledge and belief.

"Given under my hand the 5 day of September, 1857.

"DAVID GIBSON."

"*Rep'n.*

"To which the complainants replied generally.

"And at another day, to wit, at a circuit court of said county, continued & held on the 16th day of April, 1858,

"This cause came on to be heard this 16th day of April, 1858, on the bill and exhibits filed therewith, and the answer of the Union Potomac Company filed during this term, and replication thereto, and was argued by counsel.

"*Decree, Apl.*, 1858, *for sale.*

"On consideration whereof, the court being of opinion that the complainants are at this time entitled to have a decree against the defend-

ants for all the arrearages of interest on the principal sum of one thousand one hundred dollars, which interest was payable on the 20th day of July, in the year 1840, and afterwards on the 20th day of July
32 in each succeeding year, and also a decree for a sale of the mortgaged premises to satisfy and pay off the said arrearages of interest, doth adjudge, order, and decree that unless the defendant do, within sixty days after the date of this decree, pay to the complainant the said several arrearages of interest up to the 20th day of July, 1857, amounting in the aggregate to the sum of $1,188.00, then James D. Armstrong and Robert White, who are appointed commissioners for the purpose, shall sell to the highest bidder, before some public tavern in the town of Piedmont, the lands in the bill and proceedings mentioned, on the following terms, viz: ten per cent. of the price to be paid in hand, 23⅓ per centum on or before the 1st day of September, 1858, and the residue in two equal instalments, the first to be paid on the first day of April, 1859, and the second on the first day of September, 1859, taking bond and security for the deferred payments, and retaining the legal title as further security. The said commissioners are directed to advertise for at least four weeks the time, place, and terms of sale in some newspaper printed at Piedmont, (if any,) and such other newspaper as the said commissioners shall deem proper, and, before they receive any money under this decree, execute a bond before the clerk of this court in the penalty of $5,000, conditioned as the law directs.

33 "At a circuit court of said county, continued & held on the 7th day of April, 1859, this cause was set for hearing; and at a circuit court of said county continued & held on the 13th day of April, 1857, this cause came on to be heard on the papers formerly read, and the report of Robert White & James D. Armstrong, special commissioners, who made sale of the land in the bill & proceedings mentioned, to which report there being no exception, the same is confirmed, and was argued by counsel.

"*Decree, Apl.*, 1859, *conf'g sale, &c.*

"Upon consideration whereof the court doth adjudge, order, and decree, that said Robert White and James D. Armstrong do collect the deferred payments as they respectively fall due, and that they first do pay, out of the funds arising from said sale, the costs of this suit up to the present term, the costs of said sale, and deed to the purchaser, and then pay unto said Hector Sinclair, or his agent or assignee, so much as will amount to one full half of the legal interest upon the sum of $1,100.00, mentioned in the bill & proceedings heretofore, which sum was due 20th July, 1840, and the interest on which was to be paid on 20th July in each succeeding year thereafter, said interest to be calculated accordingly up to this date, and the balance of the said fund, when collected, said commissioners are directed to loan out upon good personal security until the further order of the court."

The following are copies of the bond of commissioners, report
34 of sale mentioned above, & papers accompanying the same, so far as they remain here:

"*Comrs'. bond.*

"Know all men by these presents that we, James D. Armstrong, Rob-

ert White, and E. M. Armstrong, are held and firmly bound unto the Commonwealth of Virginia, in the just and full sum of five thousand dollars, to be paid to the said Commonwealth, for the payment whereof, well and truly to be made, we bind ourselves, jointly and severally, and each of us binds his legal representatives, by these presents, sealed with our seals and dated this 30 day of Dec'r, 1858.

"Whereas at the April term of the circuit court of Hampshire County, in the year 1858, in a suit in said court depending, between H. Sinclair & Daniel R. Brant, plaintiffs, and the Union Potomac Company, defendant, it was adjudged, ordered, and decreed that unless the defendant do, within sixty days after the date of this decree, pay to the complainant the said several arrearages (mentioned in this decree) of interest up to the 20th day of July, 1857, amounting in the aggregate to the sum of $1,188.00, then James D. Armstrong and Robert White, who are appointed commissioners for the purpose, shall sell to the highest bidder, before some public tavern in the town of Piedmont, the lands in the bill and proceedings mentioned, on the following terms, viz: Ten per cent. of the price to be paid in hand, 23⅓ per cent. on or before the 1st day of September, 1858, and the residue in two equal instalments, the
35 first to be paid on the 1st day of April, 1859, and the second on the 1st day of September, 1859, taking bond and security for the deferred payments, and retaining the legal title as further security. The said commissioners are directed to advertise for at least four weeks the times, place, and terms of sale in some newspaper printed in Piedmont, (if any,) and such other newspapers as the said commissioners shall deem proper, and before the' receive any money under this decree execute a bond before the clerk of this court in the penalty of $5,000, conditioned as the law requires.

Now, the condition of the above obligation is such that if the said James D. Armstrong & Robt. White shall faithfully perform their duties as commissioners as aforesaid, then the above obligation to be void, else to remain in full force and virtue.

"JAS. D. ARMSTRONG. [SEAL.]
"ROBT. WHITE. [SEAL.]
"E. M. ARMSTRONG." [SEAL.]

"*Report of sale.*

"SINCLAIR, &C.,
"*vs.*
"UNION POTOMAC CO.

"We the undersigned spl. comrs., advertised the lands in the bill, &c., mentioned, in Piedmont Independent & Cumberland Civilian, to be sold at Piedmont on the 30th Dec'r, 1859, subject to the life-estate of Nancy Sinclair. We endeavored, first, to sell one-half for the amt. due under decree, but could sell in no other way than by putting up the whole, subject to said life-estate, 10 pr. ct. in cash, 23⅓ 1st Apl., 1859, & bal. in two annual payments. Patrick Hammill became the purchaser at
36 price of $2,030.00.

He paid as cash payt	$203 00
2d payt	473 66
	$676 66

Paid Pied't for advtz	$10 00
" Cumb. Civ. "	10 00
Com'n	49 60
	69 60
Deed	5 00

" Bonds for 2d & 3d payts., deferred, herewith returned.
" ROBT. WHITE,
" JAS. D. ARMSTRONG.
" *Spl. Comrs.*"

(Endorsed on the back:) "The third payment of $676.66⅔, due 1 Apl., 1860, has since been paid to your commissioners.
"ROBT. WHITE, *Spl. Comrs.*'

"Of the above amt. Hector Sinclair has received $200.00, as per receipt filed, from the purchaser."
"Papers returned with above report."

"*A greement as to sale.*"

" HECTOR SINCLAIR, &c.,
" *vs.*
" UNION POTOMAC COMPANY. } In chancery.

"In the circuit court of Hampshire County.

"At the April term, 1858, of said court, a decree was rendered for a sale of the lands in the bill and proceedings mentioned, or so much thereof as would be necessary to satisfy said decree, upon the following terms, to wit, ten per cent. of the price to be paid in cash, 23⅓ per cent. on or before 1 day of September, 1858, and the residue in two equal instalments, the first to be paid on the 1st day of April, 1859, and the 2d on 1st day of September, 1859; and the said sale not having been ad-
37 vertised or made before this time (for some reason) by the *by the* commissioners in said decree named, it is hereby agreed by the undersigned counsel in said cause that said sale may now be advertised and made as under said decree, except that it shall be made upon the following terms, to wit, 10 per cent. of the purchase-money in cash, and the 23⅓ per cent. on or before the 1 day of April, 1859, and the residue in two equal instalments; the first to be paid on the 1st day of April, 1860, and the residue on the 1st day of April, 1861, said sale to be made on 24 Dec'r. 1858.
Nov. 15, 1858.

"STREET & WHITE, *Attor. for Plff.*"

" *Advertisement.*

"Public sale of valuable coal and farming land.

"By virtue or a decree rendered by the circuit court of Hampshire County, Virginia, in a cause in said court depending, wherein Hector Sinclair, &c., are complainants, and the Union Potomac Company is defendant, the undersigned commissioners will offer at public sale to the

highest bidder, before the Woodside House, in Piedmont, Hampshire County, Virginia, on Friday, the 24th day of December, 1858, the following tract of land, or so much thereof as is necessary to satisfy said decree, (except one-eighth of an acre, including the grave of the late Robert Sinclair,) to wit, the tract of land conveyed by Nancy Sinclair to the said Union Potomac Company, containing 110 acres, more or less,
38 about one hundred acres of which it is said are in a good state of cultivation. This land lies near Piedmont, directly in the coal-region, a short distance above Pine-Swamp Run, about ¾ of a mile from the junction of said run with the north branch of the Potomac; it is said to contain all the veins of coal to be found in the coal-basin; the large fourteen feet vein has been opened at one end, and it is believed there are about sixty acres of the vein well covered by this land. Nancy Sinclair, who is now a very old woman, has a life-interest in the land. Terms of sale, ten per cent. of the purchase-money in cash, 23⅓ per cent. on or before the first day of April, 1859, and the residue in two equal instalments, the 1st to be paid on the 1st day of April, 1860, and the other on the 1st day of April, (torn off.) Bonds with approved security will be required for deferred payments, and the legal title to be retained as a further security. Sale to commence at 12 o'clock, m.

"Nov'r 14, 1858, tds.

"ROBERT WHITE,
"JAMES D. ARMSTRONG,
"*Special Commissioners.*"

"*Last bond for deferred payments, others having been withdrawn from papers.*

"$676.66⅔c. On or before the first day of April, 1861, we, or either of us promise and bind ourselves, our & each of our heirs & personal representatives, to pay to Robert White & James D. Armstrong, special commissioner, in a cause in chancery depending in the circuit court of Hampshire County, wherein Hector Sinclair, &c., are complainants, and the Union Potomac Company is defendant, the sum of six hun-
39 dred and seventy-six dollars and sixty-six and two third' cents, for third deferred payment on land this day sold by them. As witness our hands and seals this 30th day of Dec'r 1858.

"P. HAMMILL." [SEAL.]
"JOHN J. MORRISON." [SEAL.]

(Endorsed:) July 2, 1866, by cash of P. Hammill..... $65 32½
" " " " by cash of Morrison.....$444 95½

"*Decree, Apl., 1860, to collect, &c.*

"At a circuit court of said county, continued & held on the 6th day of April, 1860, this cause was set for hearing, and at a circuit court for said county continued & held on the 16th day of April, 1860, this cause came on to be heard, on the papers formerly read; and the court doth now direct that said special commissioners James D. Armstrong & Robert White do collect the fund loaned out by them under the order of last April term, & out of that fund and such money as may be in their hands, pay unto Daniel R. Brant, or his agent or assignee, so much as will amount to one full half of the legal interest upon the sum of $1,100.00 mentioned in the bill and proceedings heretofore, which interest was first due 20th July, 1840, and the interest upon which was

to be paid on the 20th July, in each succeeding year thereafter, and interest to be calculated accordingly, up to the 20th July, 1859. The court also enlarging the decree of April term, 1859, so as to direct that said interest therein directed to be paid to Hector Sinclair shall be calculated up to and paid, also, to said 20th July, 1859; and Robert
40 White is appointed a commissioner to convey unto said Patrick Hammill, upon the payment by him of all the purchase-money, by proper deed, said real estate purchased by him, and acknowledge the same for recordation. And the said cause was then continued from term to term in said court, and in the circuit court of Hampshire County, West Virginia, until at a circuit court of Hampshire County, West Virginia, continued & held at the court-house of said county, on the 4th day of September, 1867, this cause came on to be heard upon the papers formerly read, and it appearing to the court, from statement of special commissioners J. D. Armstrong & Robert White, & their vouchers, that there is still in their hands the sum of $532.78, $475.20½ of which is coming to Daniel R. Brant & $57.57½ to Hector Sinclair, it is ordered that said commissioners do pay the said amounts over to said Brant & Sinclair respectively, with interest thereon 2d July, 1866. And the court doth further adjudge, order, and decree that the complainants do now recover of the defendants the sum of $1,100.00c., with interest thereon, payable on the 20th July, in each and every year from the 20th July, 1839, & the costs of this suit, to be credited by the sum of $2,243.25 cts., as of date 2d July, 1866, that being the sum shown by said statement as made by the sale of the real estate in this cause, and leave is given the complainants to sue on any proper
41 execution for the said recovery.

"And on the 10th day of April, 1868, came the complainants, by their counsel, and sued out of the clerk's office of the said last-named court, upon said judgment, a writ of fieri facias against said Union Potomac Company; which, with the endorsements & return thereon, is as follows:

"*Fi. fa.*

"The State of West Virginia to the sheriff of Hampshire County, greeting:

"You are hereby commanded that of the goods & chattels of The Union Potomac Company, late in your bailiwick, you cause to be made one thousand one hundred dollars, with interest thereon, to be computed after the rate of six per cent. per annum, from the 20th day of July, 1839, which H. Sinclair & D. R. Brant, late in our circuit court for Hampshire County, have recovered against it, upon a bill in chancery, also forty-two dollars and forty-eight cents, which by the same court were adjudged to them for their costs by them about their suit in that behalf expended, whereof the said company is convict, as appears to us of record, and that you have the same at the clerk's office of our said circuit court, at rules to be holden in the said office on the first Monday in June next, to render unto the said Sinclair & Brant of the sum, interest, and costs aforesaid, and have then and there this writ. Witness Charles M. Taylor, clerk of our said court, at the court-house
42 of said county, the 10th day of April, 1868, and in the 5th year of the State.

"C. M. TAYLOR."

(Endorsed:) "This execution is to be credited by two thousand two hundred & forty three dollars and twenty-five cents, as of date 2d July, 1866.

Teste: "C. M. TAYLOR, *Clerk.*

(Returned:) "No property found within my bailiwick.
"JNO. C. HEISKELL, *D. S.*,
"For J. H. POWELL, *Shff.*, *H. C.*"

The following are copies of papers filed in this cause:

"Ex. D.—*N. Sinclair to Sinclair & Brant, (ag't & ass't.)*

"Know all men by these presents that whereas I have and own a life time interest in a certain tract of land on which I now reside, which interest I sold and conveyed to Duff Green, as agent for the Union Potomac Company, by deed bearing date on the 20th day of July, 1839, for the sum of eleven hundred dollars, and which sum the said Green has never yet paid, except thirty dollars of interest; and the said Green did at the same time, on the 30th day of July, 1839, make and execute to me a mortg'e upon the same property to secure the purchase-money, none of which has ever been paid; and now inasmuch as my son, Hector Sinclair & Daniel R. Brant *has* bought out the heirs in said estate, I therefore by these presents, for and in consideration of the sum of one hundred dollars cash, to be paid to me by Hector Sinclair, Daniel
43 R. Brant, at the expiration of each & ev'ry year so long as I live, and at my death the said tract or parsell of land hereby meant or mentioned, on which I now reside, containing one hundred and twenty acres, more or less, is paid for in full, the receipt of which is hereby acknowledged; yet nevertheless I retain if ever I should *knead* or desire it for my use to live in the house formerly builded and used by Robert Sinclair, situated on the northeast corner of said farm, as long as I live, but in no event to exercise ownership or controll over it except used by myself to live in; I therefore hereby sold and conveyed unto the said Daniel R. Brant & Hector Sinclair all my *intire* interest in said land, and likewise in said mortgage, if ever said mortgage should concern this said tract of land hereby conveyed; & further, I hereby give and deliver up to them, the said Daniel R. Brant & Hector Sinclair, free & peas*i*ble possession to the premises herein described or intended.

"Given under my hand and seal on this 24th day of August, in the year of our Lord one thousand eight hundred and fifty-four.

her
"NANCY + SINCLAIR. [SEAL.]
mark.

"Signed, sealed, & delivered in the presence of—
"JOSEPH W. DAVIS."

"*H. Sinclair to Z. Bane.—Ass't.*

"Whereas there was an agreement between Hector Sinclair & William A. Bane, now deceased, of whose estate the undersigned,
44 Zimri Bane, is the admr., about the purchase by said Wm. A. Bane from said Hector of his interest in the Sinclair farm, in Hampshire County, and in a mortgage executed by Duff Green to Nancy

Sinclair, & assigned by Nancy Sinclair to Daniel R. Brant & said Hector Sinclair, the interest thus claimed by said Hector being one-half of said farm & one-half of said mortgage; and whereas there is a dif'erence as to the amount due said Hector upon said purchase, he claiming a greater sum than said admr. is willing to pay; and whereas the said Bane in his life-time had paid to said Hector a portion of the purchase-money for his said interest; and the said parties being desirous to settle all disputes about said matters, & arrange them amicably: Now the said Hector Sinclair doth hereby agree to pay to said Zimri Bane, admr. of Wm. A. Bane, decd., the sum of four hundred & fifty dollars, so soon as he, the said Hector, can make and receive the same by a foreclosure of said mortgage or otherwise from said Green, or any other person acting for him. And the said Zimri Bane doth hereby agree to receive said sum of money, and for himself individually & as the admr. of Wm. A. Bane, & for the heirs at law of said Wm. A. Bane doth hereby release all & every claim upon said real estate & upon said mortgage, and doth hereby assign & transfer all such claim or interest as said Wm. A. Bane may have had therein, back to said Hector
45 Sinclair.

"Witness our hands this 13 March, 1857.

"HECTOR SINCLAIR.
"ZIMRI BANE.

"When the agreement mentioned in the above instrument was made between said Hector Sinclair & W. A. Bane, it was understood that in part payment for the interest of said Hector in said Sinclair farm, & said mortgage, said Hector was to take a farm said Bane purchased of Luke Neale, in Preston County, Virg'a, & pay said Luke the sum of money said Bane had agreed to pay him, & for said land said Bane transferred the title-bond to said Hector, which Luke Neale to him & said Bane executed to said Hector his four bonds: one for $300, one for $200, one for $154, & one for $84, so as to make up the amount of money due from said Bane to said Luke, which bonds are now delivered up by said Hector to said Zimri.

"HECTOR SINCLAIR.
"ZIMRI BANE."

"*Sinclair's order to pay to Bane.*

"To Robert White & James D. Armstrong, commissioners in the case of Hector Sinclair vs. Union Potomac Company.

"You will please pay to Zimri Bane, admr. of Wm. A. Bane, decd., out of my share of the funds arising from the sale of the lands under a decree in the above-mentioned cause, the sum of four hundred & eighteen dollars and seventy-five cents, with interest from the day of .
46 "Given under my hand this day of May 31, 1839.

"HECTOR SINCLAIR."

"*Receipt endorsed on foregoing order.*

"Recd. of Robert White & Jas. D. Armstrong, commissioners, on the 28th Feb'ry, 1859, fifty dollars, & on the 26 April, 1859, one hundred & seventy-five dollars, & on the 17 June, 1859, twenty dollars, paid Saml. Fink, which sums are to be received as so much paid on the within

order; also received on the same, the 24th day of May, 1860, one hundred and seventy-four dollars & thirty-six cents.

"ZIMRI BANE,
"*Admr. of Wm. A. Bane*"

"*Statement as to Z. Bane's payts.*

"We have taken $55.00 of this money out of here of Zimri Bane's part of it, $40.00 of the amt. Robert White is to credit upon a note he holds against Zimri Bane, & $15.00 Mr. Armstrong got & is to credit that amt. on an account he holds against said Zimri Bane.

"July 2d, 1866.

"ROB. WHITE.
"JAS. D. ARMSTRONG."

"*Z. Bane's receipt in full.*

"Recd. of Robert White Apl. 27th, 1866, the balance, on settlement, due me as admr. of W. A. Bane, decd., of the four hundred and fifty dollars, after deducting $419.36c. paid me, in the chancery cause of Sinclair vs. The Union Potomac Company. Said White settles with me as a commissioner in said cause.

"ZIMRI BANE."

[2-cent stamp.]

"*Sinclair to Hammill.—P. A., &c.*

"NEW CREEK, *March* 14, 1857.

47 "I hereby authorize P. Hammill to attend for me, and in my name, to all matters connected with the foreclosure of a certain mortgage assigned to D. R. Brant and myself by Nancy Sinclair; and in all respects to act for me in all matters connected with the sale of my interest in said mortgaged premises.

"In testimony whereof I hereunto set my hand and seal.

"HECTOR SINCLAIR. [SEAL.]

"Teste:
"W. J. ARMSTRONG."

"Recd. from Patrick Hammill two hundred dollars, paid me for so much of my portion of fund in hands of James D. Armstrong & Robt. White, commrs. in case of Sinclair, &c., against Union Potomac Company, and I hereby transfer and assign unto said Hammill two hundred dollars of the amount decreed to be paid by me by said commissioners in said cause, and I hereby direct said commissioners to pay two hundred dollars out of any funds now or hereafter in their hands coming to me in said cause.

"Witness my hand and seal this 31st day of May, 1859.

"HECTOR SINCLAIR." [SEAL.]

"*Sinclair to Hammill.—Order.*

"$195.

"APRIL 22ND, 1861.

"Messrs. ARMSTRONG & WHITE,
"*Special Commissioners:*

"Pay to Patrick Hamill one hundred and ninety-five dollars out of

any money in your hands due me from the proceeds of the sale of
48 the Sinclair farm, and this shall be your rect. for the same, and oblige—

"Yours, respectfully,

"HECTOR SINCLAIR.

"Witness:
"D. E. OFFUTT."

"*Sinclair to Hammill.—Order.*

"$75.] "OAKLAND, ALLEGANY COUNTY, MARYLAND,
"*March 6th*, 1863.

"Mr. James Armstrong and Robert White, special commissioners for the sale of the Sinclair property in Hampshire County, Virginia, pleas' pay P. Hammill the further sum of seventy-five dollars out of my half of the proceedes of the sale of said property, and this shall be your justification rect. for so doing, and oblige—

"Yours, respectfully,

"HECTOR SINCLAIR."

[2-cent stamp.]

"*Sinclair to Hammill.—Order.*

"OAKLAND, *July the 7th*, 1867.

"Robert White & James D. Armstrong, special commissioners, wil pleas' pay to Patrick Hamill all or any balance which may be due me from the funds or proceeds of sale of the Sinclair property, said Hammill having advanced to me fifty dollars on account of the same, and this shall be your full justification for so doing.

"HECTOR SINCLAIR.

"This order delivered to us July 16th, 1867.

"ROBT. WHITE."

"*R. White's rect.*

"Recd. of James D. Armstrong & Robt. White, spl. comrs., Sinclair vs. Union P. Co., five dollars fee for writing deed.
"Aug. 23, '60.

"R. WHITE."

49 "*Trowbridge rec't.*

"$10. Received of the Rev. P. Hammill ten dollars in full, fee ad'r, in the case of Sinclair, &c., vs. Duff Green and the Union Co., wherein J. D. Armstrong and Robert White are special commissioners to sell.
"Piedmont, March 26, 1859.

"A. S. TROWBRIDGE."

G. Charles' rec't.

"CUMBERLAND, *Feb.* 24, 1859.

"*Messrs. Robt. White & Jas. D. Armstrong, commissioners, to George Charles, Dr.*

"1858, Nov. 23. To pub. sale of Sinclair's property in Cumberland, Civilian, 7 s. 5 t..... $10.00

"Received payment,

"Gents: Please remit the above amount. If you want a certificate of publication, will send it.

"Yours, respectfully,

"GEO. CHARLES."

"*P. Hammill, order & rec't in full.*

"OAKLAND, *Nov.* 9, 1867.

"ROBT. WHITE & J. D. ARMSTRONG, *Special Commissioner:*

"Pay to Alex. White fifty-eight dollars and eighty-three cents interest on same, from 2d of July, 1866, bal. due me as assignee of Hector Sinclair, as per statement sent me, and this shall be your rec't for the same.

"P. HAMMILL."

"Received of Robt. White, special commissioner in the case of Sinclair vs. Union Potomac Company, fifty-seven dollars and fifty-eight cents, with interest from 2d July, 1866, amt. in full coming to Hector Sinclair in said suit, transferred by said Hector to P. Hammill.

"ALEX. WHITE."

50 [2-ct. stamp.]

"*D. R. Brant's order.*

"WEBSTER, IOWA, *April* 16, 1861.

"Messrs. ROBT. WHITE & ARMSTRONG, *Attys., Romney, Va.:*

"GENTLEMEN: If you have not credited Mr. P. Hamill's note with $20, & he has paid it without the benefit of the credit, my wish is for you to pay him the $20, and oblige

"D. R. BRANT."

"*Sp'l comr's bank-account,* (33)".

"ROBERT WHITE & J. D. ARMSTRONG, *sp'l com'rs.*

	DR.				CR.		
"1859.				1859.			
"F'b'y 28.	Cash,	Z. Bane	$50 00	Febr'y 9.	Cash.		$203 00
"Apl. 27.	"	" "	175 00	Ap'l 14.	"		463 66
"May 20.	"	J. B. White, jr	49 60	" 19.	"	(261, 56)	476 66
" "	"	Geo. Charles	10 50				
"June 24.	"	S. Fink	20 00				
"Aug't 1.	"	J. D. Armstrong	100 00				
"1860.							
"May 5.	"	Zimri Bane	174 36				
"June 1.	"	Bal. ℀	563 86				
			$1,143 32				$1,143 32
"Aug't 23.	"	Danl. R. Brant	558 86	June 1. Bal. ℀			563 86
	"	Robt. White	5 00				

"*Statement of comr's, referred to in final decree.*

"SINCLAIR & BRANT *vs.* "UNION POTOMAC COMP'Y. } Statement of sp'l com'rs J. D. Armstrong & Robert White, as to fund.

51 "*J. D. Armstrong & Robert White,* DR.

"To cash payment received	$203 00
"2d " " "	473 66
	$676 66

CR.

"Paid Piedmont Independent	$10 00	
" " Cumberland Civilian	10 00	
" " commissions on sales	49 60	
" " costs suit, say	45 00	
" " deed	5 00	
" " Street & White, fees, vs. Sinclair for suit	30 00	
		150 00
		$526 56
"Paid Zimri Bane under his agreement with Sinclair—		
"Feb'y 28th, 1859	$50 00	
"Ap'l 27th, 1859	175 00	
"June 24th, 1859, (S. Fink for him)	20 00	
"May 25th, 1860	174 36	
		419 36
		$107 20

DR.

"To 3d pay't Ap'l 19, 1860	676 66
	$783 86

CR.

"Paid Hammill for Hector Sinclair, 31 May, '59	$200 00
" " Dan'l R. Brant	558 86
	758 86
	$25 00

DR.

"To 4th pay' & interest received	889 91
	914 91

CR.

"Paid order of H. Sinclair to Hammill, Ap'l 21, '61	$195 00	
" " int. to 2d July, 1866	60 68	
"Order of same, Mch. 6, 1863	75 00	
" Int. to 2 July, 1866	14 94	
52 "P'd Newlon's a/c vs. same, 2 bus. potatoes	5 92	
"Int. to 2d July, 1866	1 84	
"Dan'l R. Brant's order to P. Hammill	$353 38	
"Int. to 2d July, 1866, 6.25	26 25	
		379 63
		$535 28
"Paid stamps on deed		2 50
		$532 78

"Statement between com'rs & Hector Sinclair.

	Com'rs,	DR.
"To amt. sale-money received by com'rs, with interest, as paid by Hammill		$2,243 25
"Off costs suit & sale		120 10
		$2,123 15
"Off, paid stamps on deed		2 50
"Amount in hand or distribution		$2,120 65
"Hector Sinclair's half		$1,060 32½
"Hector Sinclair's half		$1,060 32½
"Paid attos. fee for him	$30 00	
" " Zimri Bane	419 36	
" " Patrick Hammill	200 00	
" " same as crs. on his bond	353 38	
		1,002 74
"In com'rs hands, coming to H. Sinclair		$57 58½
"to bear interest from 2 July, 1866, (paid.)		

"Statement as between com'rs & D. R. Brant.

"Com'rs, DR.

"To ½ fund for distribution		$1,060 32½
'Paid him Augt 23, 1860	$558 86	
" " P. Hammill's, on his order July 2d, 1866	26 25	
		585 11
"To bear int. from 2d July, 1866, due D. R. Brant		$475 21½

"Paid.

53 "JAS. D. ARMSTRONG.
"ROBT. WHITE."

(Endorsed:) "Sinclair vs. U. P. Co. Statement of sp'l com'rs as to fund A."

"*Receipt Brant's atto.*

"Rec'd July 2, 1866, of J. D. Armstrong & Robert White, four hundred and fifty-five dollars, upon amt. coming to Danl. R. Brant, as per above statement.

"ROBT. WHITE,
"*Atto. for D. B. Brant.*"

[2-cent stamp.]

"*D. R. Brant's receipt.*

"Received, October 24th, 1867, of Robert White, five hundred and twelve dollars and sixty cents, amount in full of my claim in chancery suit of Brant & Sinclair against Union P. Co. in circuit court of Hampshire County. This payment is made in accordance with statement noted in decree of Sept. term, 1867.

"D. R. BRANT."

[2-cent stamp.]

"*Letters & orders, &c., from P. Hammill.*

"JULY 5TH, 1859.

"ROBT. WHITE, Esqr.:

"SIR: I enclose herewith you Hector Sinclair's order in favor of Bale, also a rect. for $200 on note due Apl., 1860, which please acknowledge and credit on note of that date.

"Yours, truly,

"P. HAMMILL."

"OAKLAND, *May 9th*, 1860.

"ROBT. WHITE, Esqr.:

"SIR: I have not recd. the note given you and Mr. Armstrong as commissioners by Morrison & myself, it being paid in full. I hope further that the court has ordered the whole distribution, as will
54 make arrangements to take up the last notes as soon as that is done.

"Truly, yours, &c.,

"P. HAMMILL."

"SWANTON, *July* 4, 1866.

"Mr. WHITE: On offering my deed for record, it was decided that it

required a stamp of two dollars and fifty cents, instead of fifty cents, which sum, I think, ought to be paid out of the purchase-fund. I had to pay it, of course; will you do me the favor to enquire of J. T. Vance whether the deed for the Sinclair property was or not recorded in Romney. I refer to the one made some time ago by Morrison & myself. I think he had the matter in hand. It should now be recorded in Mineral Co., and must be so done; otherwise the property will be taxed to both. Am sorry to trouble you so much.

"Yours, truly,

"P. HAMMILL."

"*Newlon's letter.*

"FROSTBURG, *Mch.* 26, 1861.

"Bro. HAMMILL: Hector Sinclair owes me, Apl. 4, 1859, 3.50; 2 yrs.' int. 42, 3.92. I think you will see him; collect it for me; take his note; I never see him; try & collect for me; it was a bolt of calico. All well.

"A. NEWLON."

"*Papers omitted heretofore.*

"Duff Green, esqr., both in your individual character & as president of the Union Potomac Company:

"The Union Pacific Company having on the 20th day of July, 1839, executed to Nancy Sinclair its bond, signed by you as its presi-
55 dent, with the seal of said company attached, which bond is conditioned for the payment of the sum of one thousand one hundred dollars, within twelve months after they shall have been required so to do, with legal interest thereon, payable on the 20th day of July in each and every year; you are therefore hereby notified that payment of the same, according to the conditions thereof, is hereby required of the said company, and of any and all persons thereby bound, said bond having on 24th August, 1854, *having* been assigned by said Nancy Sinclair to us.

"Yours, &c.,

"DANIEL R. BRANT,
"HECTOR SINCLAIR,
"*By Counsel.*

"NOV. 12TH, 1858."

"*Report of commissioner in chancery.*

"*Union Potomac Company to Hector Sinclair & Danl. R. Brant, Dr.*

"1840.	To	amount bond	$1,100	00
" July 20.	"	1 year's interest on do. now due	66	00
"	"	int. on do. to 5th April, 1860	78	06
"1841, July 20.	"	1 year's int. now due	66	00
"	"	int. on do. to 5th April, 1860	74	10
"1842, July 20.	"	1 year's int. now due	66	00
"	"	int. on do. to 5th April, 1860	70	14
"1843, July 20.	"	1 year's int. now due	66	00
"	"	int. on do. to 5th April, 1860	66	18
"1844, Ju'y 20.	"	1 year's int. now due	66	00
"	"	int. on do. to 5th April, 1860	62	22
"1845, July 20.	"	1 year's int. now due	66	00
"	"	int. on do. to 5th April, 1860	58	26

56	"1846, July 20. To 1 year's int. now due	66	00
	" " int. on do. to 5th April, 1860	54	30
	"1847, July 20. " 1 year's int. now due	66	00
	" " int. on do. to 5th April, 1860	50	34
	"1848, July 20. " 1 year's int. now due	66	00
	" " int. on do. to 5th April, 1860	46	38
	"1849, July 20. " 1 year's int. now due	66	00
	" " int. on do. to 5th April, 1860	42	42
	"1850, July 20. " 1 year's int. now due	66	00
	" " int. on do. to 5th April, 1860	38	46
	"1851, July 20. " 1 year's int. now due	66	00
	" " int. on do. to 5th April, 1860	34	50
	"1852, July 20. " 1 year's int. now due	66	00
	" " int. on do. to 5th April, 1860	30	54
	"1853, July 20. " 1 year's int. now due	66	00
	" " int. on do. to 5th April, 1860	26	58
	"1854, July 20. " 1 year's int. now due	66	00
	" " int. on do. to 5th April, 1860	22	62
	"1855, " 1 year's int. now due	66	00
	" " int. on do. to 5th April, 1860	18	66
	"1856, July 20. " 1 year's int. now due	66	00
	" " int. on do. to 5th April, 1860	14	70
	"1857, July 20. " 1 year's int. now due	66	00
	" " int. on do. to 5th April, 1860	10	74
	"1858, July 20. " 1 year's int. now due	66	00
	" " int. on do. to 5th April, 1860	6	78
	"1859, July 20. " 1 year's int. now due	66	00
	" " int. on do. to 5th Apl., 1860	2	82
	"Total	$3,048	80

57 "$2,420.00, to bear int. from 5th Apl., 1860.
"Commissioner's fee, $1.50.

"J. KERR, JR, *Com'r.*"

"STATE OF WEST VIRGINIA,
"*County of Hampshire, to wit:*

"I, Charles M. Taylor, clerk of the circuit court of the said county of Hampshire, in the State of West Virginia, certify that the foregoing is a true transcript of the record & proceeding of a cause in chancery lately pending in the circuit court of Hampshire County, Virginia, & the circuit court of Hampshire County, West Virginia, with all things belonging to the same, as fully and wholly as they now exist among the records of my office & the office of said late circuit court of Hampshire County, Virginia; of the records of which I am ex-officio keeper.

"In testimony whereof I hereto set my hand and annex the seal of said court, of which I am clerk, at Romney, this 18 day of Nov'r, 1869.

{"CIRCUIT COURT, HAMPSHIRE CO., WEST VIRGINIA.} "C. M. TAYLOR."

"WEST VIRGINIA,
"*Hampshire County, to wit:*

"I, Joseph A. Chapline, only judge of the circuit court of Hampshire County, in the State of West Virginia, certify that C. M. Taylor, who has given the preceeding certificate, is clerk of the said court and ex-

officio keeper of the records of the late circuit court of Hamp-
58 shire County, Virginia.

"Given under my hand this 18th day of November, 1869.

"JOSEPH A. CHAPLINE,

"*Judge 6th Ct., W. Va.*"

21st. And your orator further showeth unto your honors that soon after purchasing the said bond and mortgage, and all the right, title, and interest of the said Nancy Sinclair in and to the said premises, your orator and said Hector Sinclair demised and leased the said premises to one William Abernathy, who thereafter continually, as the tenant of your orator and said Hector Sinclair, held the same until on or about the 1st day of May, A. D. 1867, when the said defendant The Virginia Coal and Iron Company wrongfully and frandulently induced and procured the said William Abernathy to attorn to the said defendant as its tenant, and, further, wrongfully and fraudulently induced and procured the said William Abernathy to pay rent for said premises to said defendant as its tenant, and so your orator saith it will appear if the said defendant will well and truly answer and state the facts in this respect.

22d. And your orator further showeth unto your honors that at the time your orator and said Hector Sinclair purchased the right, title, and interest of said Nancy Sinclair in and to the said premises as
59 aforesaid, and at the time the said defendant, The Virginia Coal and Iron Company, induced and procured the said William Abernathy to attorn the said defenant as aforesaid, a great portion or part of said premises were covered with valuable timber, which timber the said defendant, The Virginia Coal and Iron Company, in disregard of the rights of your orator and said Hector Sinclair, cut down, wasted, destroyed, and converted to its own use, and refuses to account or settle therefor with your orator and said Hecter Sinclair, or either of them.

23d. And your orator further showeth unto your honors that your orator is unable to state or give exactly the value of the timber, so as aforesaid cut down, destroyed, and converted to its own use by the said defendant, the Virginia Coal and Iron Company, but your orator, upon his information and belief, states and charges the fact to be that the timber, so as aforesaid cut down, wasted, destroyed, and converted to its own use by the said defendant, exceeded in value the sum of $2,000.00, and so your orator saith it will appear if the said defendant will well and truly answer and state the facts in that regard.

24th. And your orator further showeth unto your honors that on or about the 25th day of August, A. D. 1864, the said Nancy Sinclair died intestate, leaving her surviving Hugh Sinclair, Daniel Sin-
60 clair, Margaret King, wife of Wesley King, Alexander Sinclair, Robert Sinclair, Hector Sinclair, Jane Sinclair, and Nancy Sinclair, her children, who were all then over the age of twenty-one years, & the heirs at law of said Robert Sinclair, deceased.

25th. And your orator further showeth unto your honors that by conveyance from said Patrick Hammill, and divers mesne conveyances, subsequent thereto and predicated thereon, the defendant The Virginia Coal and Iron Company obtained and acquired all and singular and the only right, title, interest, claim, or demand which it now has or ever had in or to the said premises or any part thereof.

26th. And your orator further showeth to your honors that in acquiring whatever rights the said defendant The Virginia Coal and Iron Company did acquire under and by virtue of the said deed from said Patrick Hammil, and the said subsequent conveyances predicated thereon, the

said defendant acquired the same with a view and for the purpose of mining and excavating the said vein of coal as aforesaid, and converting the same and the proceeds thereof to its own use, and that in inducing and procuring the said William Abernathy as aforesaid to attorn thereto, the said defendant did so induce and procure the said
61 William Abernathy to attorn thereto, for the purpose of enabling the said defendant wrongfully and fraudulently cut down, waste, destroy, and convert to its own use the timber on said premises as aforesaid, well knowing that the fee to said property was in your orator & the heirs of said Robert Sinclair, and that upon the death of said Nancy Sinclair the said life-estate and all the interest conveyed by said Nancy Sinclair to the said Union Potomac Company, as aforesaid, would cease and forever terminate.

27th. And your orator further showeth unto your honors that the only right, title, or interest which the said Patrick Hammil or the said defendant The Virginia Coal and Iron Company ever had or acquired in or to the said premises, or any part thereof, was the pure, naked life-estate of said Nancy Sinclair, subject to the reservations contained in the said deed from said Nancy Sinclair to said Union Potomac Company, which interest terminated and forever ceased to exist on and at the time of the death of said Nancy Sinclair as aforesaid, and so your orator saith it will appear if the said defendant will well and truly answer and state the facts in that regard.

28th. And your orator further showeth unto your honors that before the commencement of this suit, your orator, by good and sufficient
62 deeds of conveyance, acquired and became the owner, and now is the owner, of all and singular the right, title, and interest of said Hugh Sinclair, Daniel Sinclair, Robert Sinclair, Hector Sinclair, Margaret King, wife of Wesley King, Nancy Sinclair, and Alexander Sinclair, heirs at law of said Robert Sinclair, deceased, in and to said premises.

29th. And your orator further showeth unto your honors that the defendant Jane Sinclair claims to be the owner in fee and entitled to one undivided eighth part of the said premises, as heir at law of said Robert Sinclair, deceased.

29th. And your orator further showeth unto your honors upon his information and belief, and so states and charges the fact to be, that said defendant Jane Sinclair now is, and for many years past has been, an idiot and insane person, and wholly unable and incompetent to act or do any business for herself.

31st. And your orator further showeth unto your honors that said defendant Jane Sinclair, and said Hugh Sinclair, Daniel Sinclair, Robert Sinclair, Hector Sinclair, Margaret King, wife of said Wesley King, Nancy Sinclair, and Alexander Sinclair were and now are the sole and only surviving heirs at law of said Robert Sinclair, deceased.

32d. And your orator further showeth unto your honors, upon his
63 information and belief and *and* so states and charges the fact to be, that said defendant Jane Sinclair never had any committee or other legal representative in that regard, and has not now, whom your orator could make a defendant hereto.

And your orator further showeth unto your honors that previously to this suit being commenced, that is to say, on or about the 15 day of July, A. D. 1870, and at other times, applied or caused also applications to be made to each of the said defendants and their agent, by letter and otherwise, requiring said defendants and their agents to act towards your orator in such a way as is equitable and just, and as is hereby prayed, and to desist from the unreasonable and unjust practices herein men-

tioned, and your orator had well hoped that such his reasonable requests would have been complied with. But now, so it is, may it please your honors, that said defendants, and especially the defendant The Virginia Coal and Iron Company, conspiring and confederating with divers persons at present unknown to your orator, but whose names, when discovered, your orator prays he may be at liberty herein to insert and make parties defendant hereto, with proper and apt words to charge them, and contriving how to wrong and injure your orator in the premises, absolutely refuse to comply with such requests.

64 And the said defendant The Virginia Coal and Iron Company sometimes pretends that under the will of said Robert Sinclair the fee to said premises vested absolutely in the said Nancy Sinclair, and that Nancy Sinclair had full right, power, and authority to convey the same in fee, and that by said deed to said Union Potomac Company the said Nancy Sinclair did convey the fee to said premises without any reservations, and that, by and under the said foreclosure proceedings, the said Patrick Hammil became the owner of said premises in fee, free & clear, and that said defendant The Virginia Coal and Iron Company, having acquired title through said Patrick Hamil, is now the owner in fee, and as such had full right to cut down, waste, destroy, & sell the said timber, and mine & excavate the said vein of coal, without in any manner or way accounting to your orator therefor; whereas your orator charges the direct contrary thereof to be the truth, and the said defendants sometimes pretend that your orator is not entitled to the relief sought by this bill of complaint, but only to a portion of such relief, whereas your orator charges the direct contrary thereof to be the truth

65 all which actings, doings, refusals, and pretences are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises. In consideration whereof, and forasmuch as your orator is remediless at and by the strict rules of the common law, and cannot have adequate relief save in a court of equity, wher' matters of this and like nature are proper' cognizable and relievable:

To the end, therefore, that said defendants may, if they can, and especially that the defendant The Virginia Coal and Iron Company may, if it can, show why your orator should not have the relief hereby prayed, and may, (without oath, however, the oath of said defendant The Virginia Coal and Iron Company, and the officers thereof, being hereby expressly waived,) to the best and utmost of their several and respective knowledge, remembrance, information, & belief, full and direct and perfect answer make to all and singular the premises, and that said defendant The Virginia Coal and Iron Company, upon being served with proceedings in this cause, and that a guardian ad litem or some other proper person be appointed by the court on behalf of the defendant, Jane Sinclair, and may answer the premises, and that the said defendant The Virginia Coal and Iron Company, its agents and attorneys, may

66 be restrained by the injunction of this honorable court from mining or excavating the said vein of coal or any part thereof, and from selling or disposing of the same or any part thereof, and that this cause be referred to the master in chancery of this court, to take and state an account between your orator and the said defendant The Virginia Coal and Iron Company as to the quantity, amount, and value of the timber aforesaid cut down, wasted, destroyed, & converted to its own use by the said defendant, and as to the amount, quantity, & value of the coal aforesaid mined, excavated, sold, & converted to its own use by said defendant, and that, upon the coming in of such report, *that*

your honors will declare your orator to be the owner in fee of an undivided seven-eighth part of said premises, and that your honors will perpetually enjoin & restrain the said defendant The Virginia Coal & Iron Company, its agents and attorneys, from med'ling or interfereing therewith in any manner or way, and that your honors will order & decree that the said defendant The Virginia Coal & Iron Company, within a short time, to be specified by your honors, pay to your orator whatever sum or sums may be found due & owing from said defendants to
67 your orator, according to the report of said master, for the timber and coal aforesaid, and for such further or other relief as to this honorable court shall seem meet: May it please your honors to grant unto your orator the people's writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said defendant The Virginia Coal and Iron Company, and to its counsellors, attorneys, officers, trustees, agents, and servants therein, and thereby commanding, and strictly enjoining the said defendant The Virginia Coal and Iron Company and the persons before mentioned in manner aforesaid; and may it please your honors to grant unto your orators the people's writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said defendant Jane Sinclair and The Virginia Coal and Iron Company, therein and thereby commanding them and each of them, on a certain day, and under a certain penalty to be therein inserted, that they personally be and appear before the said court, at the court-room in Parkersburg, in said district, then and there to answer all and singular the premises, and to stand to, abide, and perform such order and decree therein as to your honors shall seem agreeable to equity and good conscience; and your orator will ever pray, &c.

68 DANIEL R. BRANDT.

JOHN J. MCKINNON,
G. W. BRANDT,
Solrs.

STATE OF ILLINOIS, *Cook County, ss:*

On this 16th day of September, A. D. 1870, personally appeared before me the above-named Daniel R. Brant, and made oath that he has read the above bill subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except the matters which are therein stated to be on the information and belief of the complainant, and that as to those matters the deponent believes it to be true.

PHILIP A. HOYNE, U. S. COMMISSIONER, & COM'R U. S. OF CLAIMS, CHICAGO, ILL.

PHILIP A. HOYNE,
U. S. Com'r N. D. Ills.

And thereupon, on motion of the comp't, by counsel, a subpœna in chancery is awarded him against the defts.; which subpœna, together with the marshal's return thereon endorsed, is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of West Virginia, ss:

69 The President of the United States of America to the marshal of the district of West Virginia, greeting:

You are hereby commanded to summon Jane Sinclair, who is a citizen of the State of West Virginia, and a resident of said district, and The Virginia Coal and Iron Company, a corporation created and existing

under and by virtue of the laws of the State of West Virginia, and having its officers and places of business in the district aforesaid, if they be found in your district, to be and appear in the circuit court of the United States for the district of West Virginia aforesaid, at Parkersburg, on the first Monday in November next, to answer a certain bill in chancery, filed and exhibited in said court against them by Daniel R. Brant, who is a citizen of the State of Illinois, and a resident of the city of Chicago, in said State of Illinois, hereof they not to fail under the penalty of the law thence ensuing; and have then there this wit.

Witness the honorable Salmon P. Chase, Chief-Justice of the United States, this 26th day of September, A. D. 1870, and in the 95 year of the Independence of United States of America.

Attest:

[SEAL.] J. B. JACKSON, *Clerk.*

70 MEMORANDUM.—The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of November, 1870; ortherwise the said bill may be taken pro confesso.

J. B. JACKSON, *Clerk.*

Return endorsed:

Return.

Executed on Jane Sinclair by delivering to her an office copy of the within summons on the 28th day of September, 1870, and executed this summons on The Virginia Coal and Iron Company by delivering to Thomas Hines an office copy of the same to him on the 30th day of September, 1870, in the town of Piedmont, Mineral County, West Virginia, the said Thomas Hines being the agent and superintendent of said company, he being in charge of its principal office, no other officer of said company being found in said county on whom service of said summons could be made, said county of Mineral being the county in which the principal office of said company is located.

H. P. NEAL, *Deputy,*
For H. SLACK, *U. S. Marshal.*

And at another day, to wit, at a circuit court of the United States for the district of West Virginia, continued and held at Parkersburg
71 on Tuesday the 8th day of August, 1871.

Leave to file answer.

This day came the defts., by counsel, and on their motion leave is granted them to file their answer to the compl's bill.

And at another day of the same term of said court, to wit, on Thursday, the 10th day of August, 1871.

Answer filed.

This day came the parties, by their counsel, and the defts. file their answer to the complt.'s bill.

Which answer is in the words and figures following, to wit:

Answer.

The answer of The Virginia Coal and Iron Company, a body politic and corporate under the laws of the State of West Virginia, to a bill in chancery exhibited against it and Jane Sinclair in the circuit court of the United States for the 4th circuit and district of West Virginia.

This respondent, reserving all manner of benefit of exception to the many errors, untruths, &c., in said bill contained, and claiming the benefit of the statutes of limitation of the State of West Virginia as fully as if the same were here specially pleaded, for answer thereto, or to so much thereof as it is advised it is material for it to answer unto, says, that it admits that it has possession of the land in the bill men-
72 tioned, and has had since the 19th day of July, 1866, but it denies that it obtained possession in the manner stated in the bill, or that complainant and Hector Sinclair had any rightful possession of said lands after the death of Nancy Sinclair, or on or about the 1st day of May, 1867, through Wm. Abernathy as their tenant or otherwise, *or otherwise*, or that respondent wrongfully and fraudulently induced and procured the said William Abernathy to attorn to respondent. Respondent also denies that complainant had in May, 1867, or has now any right to the possession of said land, or any interest whatever in the same. Respondent admits that Robt. Sinclair made a will which was admitted to probate in the county court of Hampshire, but does not admit the statement in the bill in regard to the writing of the will, or the ignorance and want of education of said Sinclair or of John Junkins; and if those statements are to have any weight in the decisions of the questions involved in this cause, respondent calls for full proof thereof. Respondent, for further answer, says that the land aforesaid was purchased by it of Jno. F. Ehlen, for a valuable consideration, and was conveyed
73 by him and wife to respondent on the 19th of July, 1866, as will appear by a copy of the deed from them filed herewith, and marked "Defendants' exhibit A."

(Copy referred to not on file.)

And respondent avers that at the time of said purchase and the payment of the consideration by the respondent it had not the slightest knowledge of complainant setting up any claim whatever to said land, and complainant well knows that respondent did not purchase merely the life-estate of Nancy Sinclair, for she, as admitted in the bill, had been dead for more than two years before the purchase by respondent, but respondent purchased and paid for the fee-simple interest in the said land. Respondent avers that said Jno. F. Ehlen had possession of said land at and before the sale to respondent, he having purchased it for a valuable consideration from Patrick Hammill and James Morrison after the death of Nancy Sinclair, and they having purchased it at a sale made by Robt. White and Jas. D. Armstrong, commissioners appointed by the circuit court of Hampshire County, in a suit pending in said
74 court, in which the complainant and one Hector Sinclair were complainants, and The Union Potomac Company defendant, which sale was made on the 30th December, 1858, and confirmed by said court on the 13th day of April, 1859; and by decree rendered in said cause on the 16th day of April, 1860, Robt. White was appointed commissioner to convey the said land on payment of the purchase-money to Patrick

Hammill, the purchase having been made in his name, though jointly for him and Jno. J. Morrison and James Hammill. Respondent further states that said Morrison and wife, and James Hammill, and Patrick Hammill and wife conveyed this land to said Ehlen on the 4th day of November, 1864, which deed was recorded in Hampshire County; that Robert White, as special commissioner as aforesaid, conveyed to Patrick Hammill on the 3rd day of July, 1866, and said Hammill and wife conveyed to respondent on the 28th December, 1868. These last deeds were duly recorded in Mineral County. A copy of the record of the suit aforesaid, containing also copies of the will of Robt. Sinclair, of the deed from Nancy Sinclair to the Union Potomac Company, and of the mortgage from said company, is filed, marked "Defendants' exhibit B."

(Copy of Exhibit B already made part of this record.)

75 And copies of the deeds referred to are also filed, marked respectively defendants' exhibits "C," "D," "E," "F."

Exhibit C in the words and figures following, to wit:

"*Deed.—Morrison, &c., to Ehlen.*

"This deed, made this fourth day of November, in the year of our Lord eighteen hundred and sixty-four, by John J. Morrison and Carrie L. Morrison, his wife, James Morrison and Patrick Hammill, and Isabel Hammill, his wife, all of Allegany County, in the State of Maryland, parties of the first part, and John F. Ehlen, of the city of Baltimore, party of the second part, witnesseth: That in consideration of *of* the sum of ten thousand dollars, to the said parties of the first part in hand paid, they do hereby grant, bargain, and sell unto the said party of the second part, his heirs and assigns forever, all that tract or parcel of land situate, lying, & being in the county of Hampshire, in the State of Virginia, now called West Virginia, commonly called & known as the Sinclair Farm, containing one hundred & four acres, more or less, and being the same land conveyed by Nancy Sinclair to the Union Potomac Company, (reserving and excepting therefrom, however, one-eighth of an acre, and including the grave of the late Robert Sinclair,) & being the same

76 land sold by Robert White & James D. Armstrong, special commissioners appointed by decree of the circuit court of Hampshire County, in the State of Virginia, in a cause in said court depending, wherein Hector Sinclair & others were complainants and The Union Coal Company was defendants. This land lies near Piedmont, a short distance above Pine Swamp Run, and about three-quarters of a mile from the junction of said run with the North Branch of the Potomac River, and adjoining the lands of George G. Tasker, Isaac Colbaugh, the Hampshire Mining Company, and others: To have and to hold the said above tract of land unto the said party of the second part, his heirs & assigns, forever.

"J. J. MORRISON. [SEAL.]
"CARRIE S. MORRISON. [SEAL.]

"Attest:
"URIAH DUCKWORTH.

"JAMES MORRISON. [SEAL.]
"PATRICK HAMMILL. [SEAL.]
"ISABELL HAMMILL. [SEAL.]

'Teste:
"JOHN CRETYBING.
"WM. GILPIN.
"J. P. HAMMILL.

"UNITED STATES OF AMERICA,
"*State of Maryland, Allegany County, to wit:*

"I, Uriah Duckworth, a justice of the peace for the county aforesaid, in the State of Maryland, do certify that John Morrison and Carrie S. Morrison & James Morrison, whose names are signed to the above
77 writing, bearing date on the fourth day of November, in the year 1864, acknowledged the same before me in my county aforesaid. Given under my hand this fourth day of Nov., in the year 1864.

"URIAH DUCKWORTH, *J. P.*

"UNITED STATES OF AMERICA,
"*State of Maryland, Allegany County, to wit:*

"I, Wm. Gilpin, a justice of the peace for the county aforesaid, in the State of Maryland, do certify that Patrick Hammill and Isabell Hammill, his wife, whose names are signed to the writing above, bearing date on the fourth day of November, in the year 1864, have acknowledged before me in my county aforesaid. Given under my hand this fourth day of November, in the year 1864.

"WM. GILPIN, *J. P.*

"STATE OF MARYLAND,
"*Allegany County, to wit:*

"I, E. C. Lyons, a justice in and for said county, do hereby certify that Isabell Hamill, wife of Patrick Hamill, whose names are signed to the above writing, bearing date the fourth day of November, 1864, personally appeared before me in my county aforesaid, & being examined by me privily & apart from her husband, & and having the deed aforesaid fully explained to her, she, the said Isabell, acknowl-
78 edged the same to be her act, & declared that she had willingly executed the same, & does not wish to retract it. Given under my hand this 22d day of March, 1866.

"E. C. LYONS, *J. P.* [SEAL.]

"STATE OF MARYLAND,
"*Allegany County, to wit:*

"I hereby certify that Uriah Duckworth, Wm. Gilpin, & E. C. Lyons, esquires, before whom the annexed acknowledgements were made, & whose genuine signature' thereto appear, were, at the date of the said annexed certificate' of acknowledgements, justices of the peace in and for the State and county aforesaid, duly commissioned & sworn & authorized by law to administer oaths and take acknowledgements.

"In testimony whereof I hereunto subscribe my name & affix the seal of the circuit court of Allegany County this 19th day of April, 1866.

[SEAL.] "HORACE RESLEY,
"*Clk. of Ct. Ct., Allegany Co., Md.*

"HAMPSHIRE COUNTY, *to wit:*

"Be it remembered that on the 21st day of April, 1866, this deed, with the certificates thereto annexed, was presented in the recorder's office, &, being duly stamped, was admitted to record.

Teste: "T. A. KELLER, *Recorder.*

79 "A copy. Teste: "JAMES PARSONS, *R. H. C.*"

Exhibit D referred to in defts. answer is a copy of the deed Robt White, comr. to Patrick Hammill, and is copied as an exhibit and part of complt.'s bill in this record.

Exhibit E is in the words & figures following, to wit:

"*Deed.—Jno. T. Ehlen to Virginia Coal & Iron Co.*

"This deed, made this 19th day of July, in the year of our Lord eighteen hundred and sixty-six, by John F. Ehlen and Margaret Ann Ehlen, his wife, of the city of Baltimore, in the State of Maryland, parties of the first part, and the Virginia Coal and Iron Company, of Hampshire County,' West Virginia, party of the second part, witnesseth: That for and in consideration of the sum of ten thousand dollars, to the said parties of the first part in hand paid, they do hereby grant, bargain, and sell unto the said party of the second part, its successors and assigns, in fee-simple, all that tract or parcel of land situated, lying, and being in the county of Hampshire, in the State of West Virginia, commonly called and known as the "Sinclair Farm," containing one hundred and ten acres, more or less, and being the same land conveyed by Mary Sinclair to the Union Potomac Company, (reserving and excepting
80 therefrom, however, one-eight' of an acre, including the grave of the late Robert Sinclair,) and being the same land sold by Robert White and James D. Armstrong, special commissioners appointed by the decree of the circuit court for Hampshire County, in the State of Virginia, in a cause in said court depending, wherein Hector Sinclair and others wer' complainants and The Union Coal Company was defendant. This land lies near Piedmont, a short distance above Pine Swamp Run, and about three-quarters of a mile from the junction of said run with the North Branch of the Potomac River, and adjoining the lands of George G. Tasker, Isaac Kalbaugh, the Baltimore and Hampshire Coal Company, and others, also being the same land deeded by John T. Morrison and others to said John F. Ehlen by deed dated the 4th day of November, in the year 1864, and recorded in book 53, page 158, one of the land records of Hampshire County, in the State aforesaid: To have and to hold the said above tract of land unto the said party of the second part, its successors and assigns. Witness our hands and seals.

"JOHN F. EHLEN. [SEAL.]
"MARGARET A. EHLEN. [SEAL.]

"Attest:
"WALTER D. HESS.
"JOSEPH ATKISON.
"J. C. BLACKBURN.

81 "STATE OF MARYLAND,
"*Baltimore City, to wit:*

"I, Walter D. Hess, a justice of the peace for the city aforesaid, do hereby certify that John F. Ehlen and Margaret Ann Ehlen, his wife, whose names are signed to the writing above, bearing date on the 19th day of July, in the year 1866, have acknowledged the same before me in the city aforesaid.

"Given under my hand this 19th day of July, in the year 1866.

"WALTER D. HESS, *J. P.*

"STATE OF MARYLAND,
"*Baltimore City, to wit:*

"I hereby certify that Charles D. Hess, esquire, before whom the an-

nexed acknowledgements were made, and has thereto subscribed his name, was at the time of so doing a justice of the State of Maryland in and for the city of Baltimore, duly commissioned and sworn. In testimony whereof I have set my hand and 'ffixed the seal of the superior court of Baltimore City this 19th day of July, A. D. 1866.

[CLERK'S SEAL.] "ALFRED MACE,
[5-c. stamp.] " *Clerk of the Superior Court of Baltimore City.*

"STATE OF MARYLAND,
" *Baltimore City, to wit:*

82 " I, Joseph T. Atkison, a commissioner appointed by the State of West Virginia for the State of Maryland, at the city of Baltimore, do hereby certify that John F. Ehlen and Margaret Ann Ehlen, his wife, whose names are signed to the within writing, bearing date on the 19th day of July, 1866, have acknowledged the same before me in my State aforesaid. The said Margaret Ann Ehlen, being examined by me privily, and apart from her husband, and having the writing aforesaid fully explained to her, she, the said Margaret Ann Ehlen, acknowledged the said writing to be her act, and declared that she had willingly executed the same, and does not wish to retract it.

"Given under my hand and official seal this fourth day of May, eighteen hundred and sixty-seven.

{ COMMISSIONER'S SEAL. } "JOSEPH T. ATKISON,
" *A Commissioner of the State of West Virginia in the State of Maryland, at Baltimore City.*

"HAMPSHIRE COUNTY, *to wit:*

" Be it remembered that on this 25th day of July, 1867, this deed, with the certificate thereto annexed, was presented in the recorder's office, and, being duly stamped, was admitted to record.

"Teste: THOMAS O. KELLER,
Recorder H. C.

"Recorded book 54, page 25.

83 "MINERAL COUNTY, *sct:*

" Be it remembered that on this the 30th day of Sept., 1867, this deed, with the annexed certificates, was presented in the recorder's office, and, being duly stamped, was admitted to record.

" Teste: J. I. BARRICK,
" *Recorder M. Co.*"

Exhibit F is in the words and figures following, to wit:

"*Deed.—Patrick Hammell & wife to Virginia Coal & Iron Company.*

" This deed, made the 26th day of December, 1868, between Patrick Hammill and Isabell, his wife, of the county of Allegany, State of Maryland, of the first, and the Virginia Coal and Iron Company, a body politic and incorporated under the laws of the State of West Virginia, of the second part, witnesseth: That whereas John J. Morrison and Carrie T. Morrison, his wife, James Morrison and Patrick Hamill and Isabell Hamill, his wife, by deed dated the 4th day of November, 1864, recorded in the county of Hampshire, State of West Virginia, deed-book 53, page 158, sold and conveyed, or purported to convey, to John F. Ehlen, of the city of Baltimore, a certain tract of land lying at that

time in the county of Hampshire, but now is in the county of Mineral, having since been formed from the said county of Hampshire,
84 and which tract is described in said deed as commonly called and known as the Sinclair Farm, containing one hundred and ten acres, mor' or less, and being the same land conveyed to the Union Potomac Company, reserving and excepting therefrom, however, one eighth of an acre, and including the grave of the late Robert Sinclair, and being the same land sold by Robert White and James D. Armstrong, special commissioners appointed by the decree of the circuit court of Hampshire County, in the State of Virginia, in a cause in said court depending, wherein Hector Sinclair & others were complainants and The Union Coal Company was defendants. This land is near Piedmont, a short distance above Pine Swamp Run and about three-quarters of a mile from the junction of said run with the North Branch of the Potomac River, and adjoining the lands of George G. Tasker, Isaac Kalbaugh, the Hampshire Mining Company, and others; and whereas the said John F. Ehlen and wife conveyed the said tract of land to the said Virginia Coal and Iron Company, by deed dated the 19th day of July, 1866, recorded in Mineral County, book 1, page 418; and whereas at the time of the said conveyance by said John J. Morrison, Patrick Hamill, and others to said John Ehlen there had been no con-
85 veyance to them, or either of them, of the said tract of land by a commissioner acting under the authority of the said court under whose decree the sale before mentioned had been made; and whereas subsequently Robert White, who was appointed a commissioner for the purpose by the said court in the said cause of Hector Sinclair *Sinclair* and Daniel R. Brant against The Union Potomac Company & others, did, by deed dated the 3 day of July, 1866, recorded in the county of Mineral, book 1, page 90, conveyed to said Patrick Hamill the said tract of land: Now, therefore, with a view of correcting irregularity in the chain of conveyance, and conveying the legal title to the said party of the second part, the said Patrick Hamill and Isabell, his wife, for and in consideration of the premises, and for the further consideration of one dollar unto them in hand paid, do hereby grant to the said Virginia Coal and Iron Company the said tract of land, containing one hundred and ten acres, except the eight' of an acre lessened as aforesaid, and being the same land conveyed to the Union Potomac Company by Nancy Sinclair by deed dated the 20th day of July, 1839, and recorded in Hampshire County, book 34, page 134.

86 "Witness the following signatures and seals:

"P. HAMILL. [SEAL.]
"ISABEL HAMIL. [SEAL.]

"Teste: E. G. HALL.

[50-c. rev. stamp.]

"STATE OF MARYLAND,
"*Allegany County, sct.:*

"I, E. G. Hall, a justice of the peace for the county aforesaid, in the State aforesaid, do certify that Patrick Hamill, who' name is signed to the writing hereto annexed, bearing date the 26 day of December, 1868, acknowledged the same before me in n y county aforesaid.

"Given under my hand the 26th day of December, 1868.

"E. G. HALL, *J. P.*

"ALLEGANY COUNTY, *sct.:*

"I, E. G. Hall, a justice of the peace for the county aforesaid, in the

State of Maryland, do certify that Isabell Hamill, wife of Patrick Hamill, whose names are signed to the writing hereto annexed, bearing date the 26th day of December, 1868, personally appeared before me, in the county aforesaid, and being examined by me privily and apart from her husband, and having the writing fully explained to her, she, the said Isabell Hamill, acknowledged the said writing to be her act, and declared that she had willingly executed the same, and does not wish to retract it.

"Given under my hand this 26th day of December, 1868.

"E. G. HALL, *J. P.*

87 "MINERAL COUNTY, *to wit:*

"Be it remembered that on this the 3rd day of February, 1869, this deed, with the annexed certificate, was presented in the recorder's office, and, being duly stamped, was admitted to record.

"Teste: JAS. I. BARRICK, *Recorder.*

"Copy. Testes: J. I. BARRICK, *Recorder.*"

Respondent avers that from these exhibits it will be seen that Robt. Sinclair by his will devised this land to Nancy Sinclair during her life, with full power to dispose thereof; that she, in the exercise of this power, sold and conveyed the same to the Union Potomac Company; that said company executed a mortgage on the fee-simple interest to secure the purchase-money to said Nancy; that she subsequently assigned the said mortgage and the debt secured thereby to the complainant, Dan'l R. Brant, and one Hector Sinclair; that they subsequently instituted a suit in the circuit court of Hampshire County to foreclose the mortgage, and in their bill asked a sale, not of the life-estate of said Nancy Sinclair, but of the fee-simple estate in said land; that the court decreed a sale of the fee-simple, which sale was made, and Patrick Hammill became
88 the purchaser at the price of two thousand and thirty dollars; that the court confirmed the sale, and its commissioner, by its direction, conveyed the fee-simple in said land to said Hammill, under whose title, thus obtained, the respondent claims by regular conveyances to hold the said land, and that complainant received his share, one-half of the purchase-money of the fee-simple estate in said lands thus sold at his instance and for his benefit.

Respondent further avers that at the time of the institution of said suit by the complainant and said Hector Sinclair they had obtained conveyances from all the other heirs of Robt. Sinclair, conveying all their interest in said land to said Brant and Hector Sinclair, and thus they represented in said suit all the heirs, or were supposed to represent all; as respondent believes, Jane Sinclair was not heard of at that time, and calls for proof that any such person exists. Copies of said conveyances are filed, and marked defendant's exhibits "G," "H," "I," "J," "K."

Exhibit G is in the words and figures following, to wit:

"*Deed.—Dan'l Sinclair to D. R. Brant.*

"This deed, made the fifteenth day of June, in the year one thousand eight hundred and fifty-three, between Daniel Sinclair, of Ottawa County, and State of Ohio, of the one part, and Hector Sinclair
89 and Daniel R. Brant, of Hampshire County, and State of Virginia, of the other part, witnesseth: That in consideration of one

hundred dollars in hand paid the said Daniel Sinclair does grant unto the said Hector Sinclair & Dan'l R. Brant all my interest, the same being one-eight' part of that tract or parcel of land owned and occupied by Nancy Sinclair, wife of said dec'd; and the said *Daniel R. Brant* covenants to and with the said Hector Sinclair and Daniel R. Brant, their heirs & assigns, that at the time of sealing and delivering these presents he was seized of a good, sure, perfect, and indefeasible estate of inheritance in fee-simple in the above-described premises, free from all claims, leins, and incumbrances, and that has the right to convey the said land to the grantees, and that he will warrant generally the property hereby conveyed.

"Witness the following signature and seal:

"DANIEL his + mark. SINCLAIR. [L. S.]

"THE STATE OF OHIO,
Erie County, ss:

"I, the subscribers, justices of the peace in and for said county, in the State of Ohio, do hereby certify that Daniel Sinclair, a party to the above deed, personally appeared before me in said county and acknowledged the same to be his act and deed, and desired me to certify
90 his said acknowledgement to the clerk of the county court of Hampshire County, State of Virginia, in order that said deed may be recorded,

parties to the above deed aforesaid, and being examined by *us*, privately and apart from her husband, and having the deed afresaid fully explained to her, acknowledged the same to be her act and deed; that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

"Given under my hand and seal this fifteenth day of June, 1853.

"F. M. FOLLETT, *J. P.* [L. S.]

"THE STATE OF OHIO,
Erie County, ss:

"I, Rice Harper, clerk of the court of common pleas in and for said county, do hereby certify that F. M. Follett, esq., before whom the foregoing deed was acknowledged, was at the time of taking said acknowledgement a justice of the peace in and for said county of Erie, duly commissioned and sworn as such, and that by virtue of his said office & the laws of the State of Ohio he was fully authorized to take the acknowledgement of deeds & other instruments of writing; also I am acquainted with the handwriting of F. M. Follett, esqr., and verily believe his official signature above to be genuine.

"In testimony whereof I hereunto subscribe my name & affix
91 my official seal, at Sandusky, this 15th day of June, 1853.

[SEAL.] "RICE HARPER, *Clerk*,
"By HORACE N. BELL, *Deputy*.

"HAMPSHIRE COUNTY, *to wit:*

"Be it remembered that on the 30th day of July, 1853, this deed was presented in the clerk's office, and, with the certificates thereto annexed, admitted to record.

"Teste: J. B. WHITE, *C. H. C.*
"Copy. Teste: T. A. KELLER, *Recorder*."

Exhibit A is in the words and figures following, to wit:

"*Deed.—Hugh Sinclair & wife to R. Brant & Hector Sinclair.*

"This deed, made the fifth day of May, in the year one thousand eight hundred and fifty three, between Hugh Sainclare and Sarah, his wife, of Mason County, and State of Virginia of the one part, and Hector Sainclare and Daniel R. Brant, of Hampshire County, and State of Virginia, of the other part, witnesseth: That in consideration of the sum of eighty-five dollars the said Hugh Sainclare and Sarah, his wife, do grant unto the said Hector Sainclair & D. R. Brant all that tract or parcel of land situate and lying in Hampshire County, in the State of Virginia,
92 being the same tract or parcel of land owned and occupied by the late Robert Sainclare, dec'd, and now occupied by Nancy Sainclare, wife of said decedent; and the said Hugh Sainclare & Sarah, his wife, covenant to and with the said Hector Sinclair and Daniel R. Brant, their heirs and assigns, that at the time of sealing and delivering these presents they was seized of a good, sure, perfect, and indefeasible estate of inheritance in fee-simple in the above-described premises, free from all claims, liens, or incumbrances, and that they have the right to convey the said land to the grantee, and that they warrant generally the property hereby conveyed. Witness the following signature and seal.

"HUGH his + mark. SINCLAIR. [L. S.]

"SARAH her + mark. SINCLAIR. [L. S.]

"MASON COUNTY, *ss:*

"We, the subscribers, justices of the peace in said county in the State of Virginia, do hereby certify that Hugh Sinclair, a party to the above deed, personally appeared before us in our said county and acknowledged the same to be his act and deed, and desired us to certify his said acknowledgement to the clerk of the county court of Hampshire, in order that said deed may be recorded. At the same time personally appeared before us, in our said county, Sarah, the wife of said
93 Hugh Sinclair, parties to the above deed, and being examined by us privately and apart from her said husband, and having the deed fully explained to her, acknowledged the same to be her act and deed, that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

"Given under our hands and seals this fifth day of May, 1853.

"LOUIS WETZEL, *J. P.* [L. S.]

"GEORGE STEPHENSON. [LEAL.]

"VIRGINIA, *Mason County and Clerk's Office:*

"MAY THE FIFTH, 1853.

"I, Andrew Roseberry, clerk of the county court of Mason County, & State aforesaid, do hereby certify that Louis Wetzel & George Stephenson, whose names are signed to the foregoing certificate, was at the date of the same, and is yet, acting justices of the peace in for said county, duly authorized and commissioned to act as such according to law, and the names subscribed thereto are their genuine signature'.

"Given under my hand this day and year aforesaid.

"ANDREW ROSEBERRY, *Clerk.*

"HAMPSHIRE COUNTY, *to wit:*

"Be it remembered that on the 30th day of July this deed was presented in the clerk's office, and, with the certificates thereto annexed, admitted to record.

"Teste: J. B. WHITE, *C. H. C.*

"Copy. Teste: T. A. KELLER, *Recorder.*"

94 Exhibit I is in the words and figures following, to wit:

"*Deed.— Wesley King & wife to Sinclair & Brant.*

"This deed, made the twenty-sixth day of May, in the year one thousand eight hundred and fifty-three, between Westly King and Margena, his wife, of Shelby County and State of Illinois, of the one part, and Hector Sinclair and Daniel R. Brant, of Hampshire County and State of Virginia, of the other part, witnesseth: That in consideration of the sum of eighty-five dollars, the said Westly King and Margina, his wife, do grant unto the said Hector Sinclair & D. R. Brant all that tract or parcel of land situated and lying in Hampshire County, in the State of Virginia, being the same tract or parcel of land owned and occupied by the late Robert Sinclair, deceased, and now occupied by Nancy Sinclair, wife of said deceased; and the said Westly King and Margina, his wife, covenant to and with the said Hector Sinclair and Daniel R. Brant, their heirs and assigns, that at the time of sealing delivering these presents they *was* seized of a good, sure, perfect, and indefeasible estate of inheritance, in fee-simple, in the above-described premises, free from all claims, leins, or incumbrances, and that they have the right to convey the said land to the grantees, and that the' will warrant

general'y the property hereby conveyed.

95 Witness the following signatures and seals.

"WESLEY KING. [L. S.]

her

"MARGINA + KING. [L. S.]

mark.

"STATE OF ILLINOIS,

"*Shelby County, ss:*

"We, the justices of the peace in and for said county, in the State of Illinois, do hereby certify that Westley King, a party to the above deed, personally appeared before us, in our said county, and acknowledged the same to be his act and deed, and desired us to certify his said acknowledgement to the clerk of the county court of Hampshire, in the State of Virginia, in order that said deed may be recorded. At the same time personally appeared before us, in our said county, Margena King, the wife of said Westley King, parties to the above deed, *deed,* being examined by us privately and apart from her said husband, and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed, that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hand and seals this twenty-six day of May, 1853.

"THOMAS W. CRADDICK, *J. Peace.* [L. S.]

"H. J. ATKINS. [L. S.]

"STATE OF ILLINOIS,

"*Shelby County, ss:*

96 "I, Isaac V. Lee, clerk of the circuit court of Shelby County, do certify that Thomas W. Craddick & H. J. Atkins, whose signatures appear signed to the foregoing certificate of acknowledgement,

is, and was at the time signing the same, acting justice of the peace for the county of Shelby, duly elected & qualified as the law directs, & that full faith & credit are due to all their official acts.

"In witness whereof I have hereunto set my hand and the seal of said court at Shelbyville, this 28th day of May, A. D. 1853.

[SEAL.] I. V. LEE, *Clerk*.

"HAMPSHIRE COUNTY, *to wit:*

"Be it remembered that on the 30th day of July, 1853, this deed was presented in the clerks office, and, with the certificates thereto annexed, admitted to record.

"Teste: J. B. WHITE, *C. H. C.*

"A copy. Teste:

"THOMAS A. KELLER, *Recorder H.*"

Exhibit J is in the words and figures following, to wit:

Deed.—Sinclair &c. to Brant, &c.

"This indenture, made this 26 day of February, in the year of our Lord one thousand eight hundred and fifty-three, between Alexander Sinclair and Jemima Sinclair, his wife, *and Robert Sinclair and Jemrina Sinclair, his wife*, and Robert Sinclair and Ninevah, his wife,
97 and Joseph W. Davis and Nancy, his wife, of the first part, all of Preston County, Virginia, and Daniel R. Brant, of the county of Allegany and State of Maryland, and Hector Sinclair, of the county of Hampshire and State of Virginia, of the other, or the second part, witnesseth: That the parties of the first part, for and in consideration of the sum of three hundred and seventy-five dollars, current money of the United States, to them in hand paid by the said Daniel R. Brant and Hector Sinclair, at or before the sealing and delivery of these presents, the receipt whereof they do hereby acknowledge, and therefore do release, a'quit, and discharge the said Daniel R. Brant and Hector Sinclair, their heirs, executors, or administrators, by these presents; they the said Alexander Sinclair and Jemima, his wife, and Robert Sinclair and Ninevah, his wife, and Joseph W. Davis & Nancy, his wife, have granted, bargained, and sold, aliened, enfeoffed, released, and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, and confirm unto the said Daniel R. Brant and Hector Sinclair, their heirs and assigns, forever, all the right, title, interest, and claim, both at
98 law and in equity, of them the said Alexander Sinclair and Jemima Sinclair, his wife, and Robert Sinclair and Ninevah, his wife, and Joseph W. Davis and Nancy, his wife, in and to all that tract, piece, or parcel of land of which Robert Sinclair, late of Hampshire County, Virginia, died seized and possessed or was in any way entitled to in law or in equity, lying and being in Hampshire County, Virginia, at the time of *her* death, as follows, to wit: All that tract of land known and designated by the name of Sinclair *from*, which said farm the said Robert Sinclair, dec'd, bought of Robert Abernathy, and on which Nancy Sinclair, the wife of Robert Sinclair, dec'd, now lives, containing one hundred and ten acres, more or less, the said land hereby bargained and sold being the lands and real estate lying and being in the county of Hampshire & State of Virginia of which Robert Sinclair, late of said county, died seized, possessed, or was entitled to, at the time of his death, and the interest or *shears* in the

said land hereby bargained and sold being as follows, to wit: The said Alexander Sinclair and Jemima, his wife, owns and conveys the one undivided eighth part, and the said Robert Sinclair and Ninevah, his wife, owns and conveys the one undivided eighth part,
99 and the said Joseph W. Davis and his wife owns and conveys the one undivided eighth part of the said lands belonging to the estate of the said Robert Sinclair; and they *will* each of *their*, heirs at law of the said Robert Sinclair, dec'd, owneing afore described each the one-eighth part of the lands so as aforesaid described, do hereby sell and convey all of their *intire* interest, both at law and in equity, of the aforesaid real estate, together with all and singular the buildings, improvements, coal, iron-ore, lead, gold, or silver, woods, ways, waters, watercoarses, rights, liberties, privileges, hereditaments, or appurtenances to the said land belonging or in anywise appertaining, and the remainders, issues, and profits thereof, and all the right, title, and interest of theirs the said Alexander Sinclair and Jemima, his wife, and Robert Sinclair and Ninevah, his wife, & Joseph W. Davis & Nancy, his wife, both at law and in equity, in and to the said tract of land and premises hereby bargained and sold, or meant & mentioned or intended so to be, and every part or parsell thereof: To have and to hold the said undivided interest or *shear* in the aforesaid tract of land described
100 and intended to be conveyed, and every part and parsell thereof, with the appertenances, unto the said Daniel R. Brant and Hector Sinclair, their heirs or assigns, forever, and to their only use and behoof, and *there* heirs assigns forever; and the said Alexander Sinclair & Jemima, his wife, & Robert Sinclair and Ninevah, his wife, & Joseph W. Davis & Nancy, his wife, & *there* heirs, do hereby covenant, grant, promise, & agree to and with the said Daniel R. Brant and Hector Sinclair, their heirs and assigns, that they the said parties of the first part, and their heirs, the said tract or parsell of land and premises belonging to the real estate of the said Robert Sinclair, deceased, lying and being in the county of Hampshire and State of Virginia, and hereby granted, bargained, and sold, and every part and parcell thereof, with the appert'ances, to them the said Daniel R. Brant and Hector Sinclair, *there* heirs and assigns, against them the said parties of the first part and *there* heirs, and all and every person or persons whatsovery claiming by, through, or under them, shall and will warrant and forever defend.

"In witness whereof the said Alexander Sinclair and Jemima,
101 his wife, & Robert Sinclair and Ninevah, his wife, and Joseph W. Davis and Nancy, his wife, have hereunto subscribed names and affixed *there* seal', on the day and year first above written.

"ALEXANDREW SINCLAIR. [SEAL.]

"JEMIMA her + mark. SINCLAIR. [SEAL.]

"ROBERT SINCLAIR. [SEAL.]

"NINEVAH her + mark. SINCLAIR. [SEAL.]

"JOSEPH W. DAVIS. [SEAL.]

"NANCY her + mark. DAVIS. [SEAL.]

"Signed, sealed, and delivered in presence of—

"Teste:

"MOSES SINCLAIR.

"STATE OF VIRGINIA,

"*Preston County, to wit:*

"Be it remembered, and it is hereby certified, that, on this twenty-sixth day of February, in the year of our Lord one thousand eight hundred and fifty-three, before the subscribers, two justices of the peace of the State of Virginia, in and for Preston County, aforesaid, personally appeared the above-named Alexandrew Sinclair and Jeminah, his wife, and Robert Sinclair and Ninevah, his wife, and Joseph W. Davis and Nancy, his wife, who are personally known to us to be and professing to be the party grantors in the above deed or instrument of writing named, and acknowledged the same to be their respective act and deed, and the land and premises therein mentioned and hereby bargained and sold to be the right and estate, the estate
102 of the above-named Daniel R. Brant and Hector Sinclair, party-grantees, also therein named, their heirs and assigns forever, and the said Juminah Sinclair, wife of the aforesaid Alexander Sinclair, and Ninevah Sinclair, wife of the said Robert Sinclair, and Nancy Davis, wife of the said Joseph W. Davis, did sign and seal the said instrument before us justices aforesaid, out of the presence and hearing of their respective husbands, and, being by us privately examined out of hearing and presence of their respective husbands, whether they and each of them do acknowledge the same voluntarily & freely, and without being induced to do so by threats of or ill usage by their said husbands or by fear of their displeasure, declare and acknowledge that they, and each of them, both desired us to certify to the clerk of the county court of Hampshire County, of Virginia.

Given under our hands and seals the day and year first above written.

"J. J. HAMILTON, *J. P.* [SEAL.]

"W. SWINDLER, *J. P.* [L. S.]

"HAMPSHIRE COUNTY, *to wit:*

"Be it remembered that on the 30th day of July, 1853, this deed was presented in the clerk's office, and, with the certificate thereto annexed, admitted to record.

103 "Teste "J. B. WHITE, *C. H. C.*

"Copy. Teste: "T. A. KELLER, *Recorder.*"

Exhibit K is in the words and figures following, to wit:

"*Title bond.—Sinclair, &c., to Brandt.*

"Know all men by these presents that whereas we, Hugh Sinclair and Sarah Sinclair, his wife, and Daniel Sinclair & Sarah Sinclair, his wife, and Wesley King and Margina King, his wife, have bargained and sold, and by these presents do bargain and sell, all of our and each of our entire interests in the lands and real estate of the late Robert Sinclair, dec'd, lying and being in Hampshire County, Virginia, to Daniel R. Brant and Hector Sinclair; and whereas it is known that there does exist a mortgage upon said lands & real estate executed by Duff Green in favor of Nancy Sinclair: Therefore we, the said Hugh Sinclair and Sarah, his wife, Daniel Sinclair & Sarah, his wife, and Wesley King and Margina, his wife, do hereby covenant for ourselves & each of our heirs, promise & agree to and with the said Daniel R. Brant and Hector Sinclair all of our and each of our entire interest and claim in the aforesaid mortgage, if ever said mortgage should consume the property or be of any consequence at all whatever, and all and

104 interest in the mortgage or lands, or any and every part or par-
sell of the real estate late the property of the said Robert Sinclair, dec'd, we hereby transfer to the said Daniel R. Brant and Hector Sinclair.

Given under our hands and seals on this 5th day of May, in the year of our Lord one thousand eight hundred and fifty-three.

"HUGH his + mark. SINCLAIR. [SEAL.]
"SARAH her + mark. SINCLAIR. [SEAL.]
"WESLEY KING. [SEAL.]
"MARGINA *his* + mark. KING. [SEAL.]
"DANIEL his + mark. KINCHELOE. [SEAL.]

"Attest. Teste:

"THOMAS W. CRADDICK, *J. P'c.*
"H. J. ATKINS, *J. P.*

"Attested:
"F. M. FOLLETT.

"MASON COUNTY, *ss:*

"We, Louis Wetzel and George Stephenson, two of the justices of the peace for the county of Mason, and State of Virginia, do hereby certify that Hugh Sinclair, party to the above deed, personally appeared before us in our said county, and acknowledged the same to be his act and deed; at the same time personally appeared before us in our said county Sarah Sinclair, the wife of the said Hugh Sinclair, parties to the above deed, and being examined by us privily and apart, acknowledged the same to be her act and deed, and that she wished not to retract it.

Given under our hands this 5th day of May, 1853.

105 "LOUIS WETZEL, *J. P.*
"GEORGE STEPHENSON, *J. P.*

"HAMPSHIRE COUNTY, *to wit:*

"Be it remembered that on the 30th day of July, 1853, this deed was presented in the clerk's office, and with the certificate thereon endorsed, admitted to record.

"Teste: J. B. WHITE, *C. H. C.*
"Copy. Teste: THOMAS A. KELLER, *Recorder.*"

Respondent, for further answer, says that while there is on said land a valuable seam or vein of coal, it was wholly undeloped until after it was purchased by respondent; and said land being situated three or four miles from any railroad, the coal therein could not be made profitable without the expenditure of a large amount of money; and until such expenditure was made by respondent, the coal in said land added but comparatively little to its value. And from the best information respondent can obtain it believes and avers that the Union Potomac Company agreed to give Nancy Sinclair the full value, if not more, of the fee-simple in said land; and that the sale of said land made by the

commissioners of the circuit court of Hampshire County as aforesaid was made under the most favorable circumstances that such land
106 could be at that time, being made at Piedmont, in the heart of the coal region, and after it had been extensively advertised among those likely to purchase such property, and that it brought its full value at that time. Land of this description situated as this tract was not generally in much demand, as there was in the same region a large quantity of such land much nearer to a railroad, and the minerals of which could be mined at far less expense; that it was only at periods when, as in 1864 and 1866, there was a great redundancy of currency in the country that such lands could be sold much above their agricultural value. Respondent, after it purchased said land, proceeded to make large expenditures of money in the construction of a railroad some three or four miles in le'gth, from the Baltimore and Ohio Railroad to said land, and in opening a mine of coal and preparing to mine the same. And respondent believes and avers that it was not until after it had completed, or nearly so, its preparations and expenditures, and by so doing rendered said land valuable, that the complainant set up any claim thereto, although he well knew, as respondent believes, the
107 death of Nancy Sinclair, the condition of said land, and that respondent had purchased it and was proceeding to expend its money in developing the same. Respondent, in view of the foregoing facts, insists, first, that Robert Sinclair by his will conferred upon Nancy Sinclair full power to sell the said land in fee-simple, and that the sale made by her to the Union Potomac Company was an execution of said power and in conformity with it; and that thereafter the heirs of Robt. Sinclair had no interest whatever in the same, and respondents' title to said land is good and valid against any claim of said heirs or any of them; second, that if respondent should be mistaken in this point, the complainant having instituted a suit in the circuit court of Hampshire County, which respondent avers was a court having jurisdiction of the subject and competent to order a sale of said land, and said land having been sold in said suit at the instance of complainant, and he having received his share of the purchase-money, a large portion of it, as respondent believes and avers, being received by him after the death of Nancy Sinclair, and with full knowledge on his part of all the facts
108 above detailed, he is estopped from now setting up any claim to said land. Should respondent be mistaken in these points, and your honorable court be of opinion that complainant has any interest in said land, then respondent will ask leave of the court, in accordance with the provisions of the laws of West Virginia, to file an account showing the money expended by it in making valuable permanent improvements on said land, and that the same be repaid to it. Respondent denies that it is hopelessly insolvent, as charged in the bill. Respondent admits that it has mined some coal from said land, but only to a limited extent, and that its officers and agents may have cut down timber. Respondent, whenever required by the court, will file as accurate an account as it can of the quantity of coal mined and timber cut down by its agents. Respondent, denying all fraud, combination, &c., without this, that, &c., prays to be dismissed with its costs.

VIRGINIA COAL & IRON COMPANY.

THE VIRGINIA COAL AND IRON COMPANY,
By JOHN F. WILEY, *its President.*

STATE OF MARYLAND, *City of Baltimore, sct:*

On this second day of August, A. D. 1871, before the sub-

109 scriber, Wm. B. Hill, a commissioner appointed by his excellency the governor of the State of West Virginia in and for the State of Maryland, to reside in the city of Baltimore, duly commissioned and qualified to take acknowledgements of deeds, oaths, affirmations, &c., personally appeared John T. Wiley, president of the Virginia Coal and Iron Company, and made oath on the Holy Evangely of Almighty God that the statements in the foregoing answer are true to the best of his knowledge and belief.

Sworn to and subscribed before me on the day and year first above written.

WM. B. HILL,
Commissioner for West Virginia in Maryland.

And the compl't, by counsel, files his replication to said answer; which replication is in these words:

The replication of D. R. Brant to the answer of The Virginia Coal and Iron Company, one of the defendants.

This replicant, saving and reserving unto himself all and all manner of exceptions to the manifold insufficiences of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and in-
110 sufficient to be replied unto by this replicant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true. All which matters and things this replicant is and will be ready to aver and prove as this honorable court shall direct; and humbly prays as in and by his said bill he hath already prayed.

JACKSON & SMALL, *for Compl't.*

And this cause is continued until the next term.

And at another day, to wit, at a circuit court of the United States for the district of West Virginia, continued and held at Parkersburg, on Tuesday, the 6th day of August, 1872.

This day came the plff., by his attorney, and suggests to the court that Jane Sinclair, one of the defts. to this suit, is an idiot or insane person; and thereupon Wm. H. Hatcher is appointed guardian ad litem for said Jane Sinclair to defend her in said suit.

And at another day of the said term of said court, to wit, on the 7th day of August, 1872.

This day Wm. H. Hatcher, guardian ad litem for Jane Sinclair,
111 one of the defts. to *to* this suit, filed here in court his answer to the complt.'s bill, to which answer the complt. replies generally.

And at another day of the said term of said court, to wit, on the 10th day of August, 1872:

And now on this day this cause came on to be heard, and upon motion of complainant's counsel for an injunction restraining order in accordance with the prayer of complainants' bill, which motion the defendants' counsel resisted, it is hereby ordered that this cause be continued until the seventh day of January next, A. D. 1873, and that upon the complainant executing good and sufficient bond in the sum of twenty thousand dollars, conditioned to indemnify the said defendant, The Virginia

Coal & Iron Co. for any damage that said defendant may sustain by reason of the said injunction or restraining order, (in case the same may, upon final hearing, be deemed to have been improperly issued,) *that* said defendant The Virginia Coal & Iron Co. be enjoined and restrained as prayed for in complainant's said bill of complaint, until the further order of the court herein, and that the said defendant The Vir-
112 ginia Coal and Iron Co., upon executing and filing in this court a good and sufficient bond in an amount sufficient in the judgment of the court to fully indemnify the said complainant for any and all loss that he may sustain by reason of the said defendant mining, removing, or selling coal or timber from the premises described in complainant's bill of complaint, (the said bond to be approved by the said court or the judge thereof before the same shall become operative,) then the said defendant upon the execution & filing of said bond shall be permitted to mine, remove, or sell coal and wood or timber from said premises, but not otherwise, and that either party to said suit may take depositions in said cause by giving to the opposite parties therein ten days' notice of the time & place when & where the same shall be taken, and notice served upon the resident counsel shall be deemed sufficient.

And on the same day of the said term of said court, upon motion of the defendant The Virginia Coal and Iron Company, by counsel, and by consent of counsel for complainant, leave is granted to it within ninety days, to file in the papers of this cause certified copies of
113 the will of Robert Sinclair, the deed made by Nancy Sinclair, the widow of said Robert, to the Union Potomac Company, and the mortgage of the said The Union Potomac Company to said Nancy Sinclair to secure the purchase-money to be used in evidence in the said cause by either party.

And at another day of the said term of said court, to wit, on the 15th day of August, 1873:

On motion of the defendant The Virginia Coal and Iron Co., by counsel, and for reasons appearing to the court, it is ordered that the restraining order entered in this cause on a former day of this term be so modified as to grant to the said defendant 12 days from the date hereof to file the bond by said order allowed to be filed by said defendant, and the said restraining order for the purpose aforesaid is hereby suspended for ten days from the date of this order.

And at another day of said term of said court, to wit, on the 17th day of August, this cause came on to be heard this day upon a motion of the defendant The Virginia Coal and Iron Company to quash the restraining order issued by the clerk of this court, on the ground
114 that no such bond had been executed by complain as is required by the order made in this cause on the 10th day of this month, on consideration whereof the court doth order that unless the complainant, or some one for him, shall within twelve days execute a bond in the penalty of twenty thousand dollars, with good and sufficient security, conditioned as is prescribed by the order made in this cause the 10th day of this month, the said last-mentioned order shall be rescinded, the bond herein required may be acknowledged and certified by a commissioner of any United States

The bond referred to, with the endorsement thereon, is in these words:

Injunction bond.

Know all men by these presents that we, Daniel R. Brant and John J. McKinnon, are held and firmly bound unto The Virginia Coal & Iron Company & Jane Sinclair in the penal sum of ($20,000) t'enty thousand dollars, for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, seale' with our seals, and dated this 10th day of August, 1872.

The condition of the above obligation is such, that whereas Daniel R. Brant hath obtained from the circuit court of the United States
115 for the district of West Virginia, an injunction by a decree made and entered in the cause of said D. R. Brant vs. The Virginia Coal and Iron Company and Jane Sinclair, now pending in said circuit court, at the August term, 1872, thereof, to restrain the said defendants, their agents and attorneys, from mining or excavating the vein of coal in the bill and proceedings of said cause mentioned, or any part thereof, and from selling or disposing of the same or any part thereof:

Now, if the said Daniel R. Brant shall well and truly abide by and perform the judgment of the court, and shall well and truly pay to said defendants all such costs and damages as shall be awarded against him in case the said injunction shall be dissolved, then the obligation to be void; otherwise to remain in full force and virtue.

D. R. BRANT. [SEAL.]
[SEAL.]
JNO. J. McKINNON. [SEAL.]

Taken, subscribed, and acknowledged before , in open court, August 10, 1872.

J. B. JACKSON, *Clk.*

(Endorsed:) Filed August term, 1872. J. B. Jackson, clk.

The defendant, The Virginia Coal and Iron Co., excepts to the within bond because it is not in accordance with the order of the court.

ARMSTRONG & JOHNSONSON,
Sols. for Deft.

AUG. 15TH, 1872.

116 And at another day, to wit, on the 4th day of September, 1874, in vacation, in chambers:

Bond of deft. filed & restraining order set aside.

The defendant The Virginia Coal & Iron Company, of Hampshire County, West Virginia, having presented to the judge of this court sundry affidavits as to the value of the property in controversy, and also tendered a bond in the sum of $10,000, and the judge being of the opinion that the penalty of the bond is sufficient to indemnify the plff. by reason of the deft.'s working & operating the property: It is ordered that the bond in the penal sum of ($10,000) ten thousand executed by said company and by John A. Thompson, J. Maccubbin, and Samuel Maccubbin, its securities, conditioned as is prescribed in the order made in said cause on the 10th day of August, 1872, be accepted and filed in

the papers of said cause, and that the restraining order issued in this cause be no longer in force.

Teste:

J. B. JACKSON, *Clk.*

And, at another day, to wit, at an adjourned term of said circuit court, held at Parkersburg, W. Va., on the 7th day of January, 1873, ordered that this court be adjourned until Friday, the 24th day of January, 1873.

And at another day, to wit, at an adjourned term of the said
117 circuit court held at Parkersburg, W. Va., on Saturday, the 25th day of February, 1873.

This day came the parties, by their counsel, & there not being time to hear the whole of the argument in this cause, the same is continued until Monday.

And said cause was thus continued to finish the argument from day to day until the 1st day of February, 1873, at which day the following order was entered in this cause.

This day came again the parties, by their counsel, and the court having heard the whole of the argumont in this cause, takes time to consider of its judgment.

And now at this day, to wit, at a circuit court of the United States for the district of West Virginia continued and held at Parkersburg, on Thursday the 8th day of January, 1874:

This cause having been heretofore submitted, and argued by counsel, and coming on to be heard this 8th day of January, 1874, upon the bill, exhibits, answer of the defendant The Virginia Coal and Iron Company, and the answer of William H. Hatcher, guardian ad litem for Jane Sinclair; the replication thereto, thedepositions and the former orders made herein, the court for reasons stated in writing, and filed in the papers, doth adjudge, order, and decree, that the injunction here-
118 tofore awarded against the defendant The Virginia Coal and Iron Company, be, and the same is hereby, dissolved; that the bill of complaint be dismissed, and The Virginia Coal and Iron Company recover against the complainant its costs by it herein expended, and leave is given to sue out any proper execution for the same.

And at *at* another day, to wit, on the 23d day of February, 1874.

DANIEL R. BRANT
vs.
THE VIRGINIA COAL & IRON COMPANY & JANE Sinclair. } In chancery.

Appeal granted.

The above-named complainant conceiving himself aggrieved by the final decree entered in this cause on a former day of this term, to wit, on the 8th day of January, 1874, doth hereby appeal therefrom to the Supreme Court of the United States, and he prays that this, his appeal, may be allowed, and that a transcript of the record and proceedings in the cause, duly authenticated, may be sent to the said Supreme Court of the United States, and it appearing to the court, that security for costs in the penal sum of three hundred dollars, by the ordinary stipulation, which is approved by the court, that the plaintiff

119 shall pay all costs which shall be awarded against him by the final decree of this court, or upon an appeal by the appellate court: It is ordered that said appeal be allowed, and citation be issued in the usual form against The Virginia Coal and Iron Company and Jane Sinclair, returnable to the first day of the next term of the Supreme Court of the United States.

JNO. J. JACKSON, JR.

Teste:
W. H. HATCHER,
Clk C. C. U. S. D. W. Va.

COMPLAINANT'S DEPOSITIONS.

The following are the depositions taken and filed in the papers of this case to be read on behalf of the compl't.

UNITED STATES OF AMERICA:

In the circuit court of the United States for the 4th circuit and district of West Virginia.

DANIEL R. BRANT, COMPLAINANT,
vs.
JANE SINCLAIR & THE VIRGINIA COAL & IRON Company, defendants. } In chancery.

Notice to take dep'ns.

To the above-named defendants:

Take notice that, on the thirtieth day of January, 1872, at ten o'clock in the forenoon, or as soon thereafter as counsel *as counsel* can be
120 heard, the undersigned will sue out of the office of the clerk of said court dedimus potestatum or commission, under the seal of said court, and directed to William E. Tutt, esq., of the village of Evansville, in the county of Preston, and State of West Virginia, or to any judge or justice of the peace of the county and State last above mentioned, to take the deposition of Alexander Sinclair, Hector Sinclair, Robert Sinclair, and Joseph W. Davis, upon the interrogatories hereto attached, to be read in evidence on the part of the complainant on the hearing of the above entitled cause now pending in the said fourth circuit court, on the equity side thereof; when and where you can appear and file cross-interrogatories; and join in said commission if you wish.

Dated this 20th day of January, A. D. 1872.

JACKSON & SMALL,
For said Compl't.

STATE OF MARYLAND,
Allegany County, ss:

Daniel R. Brant, being first duly sworn, deposes and says, that, on the twentieth day of January, A. D. 1872, he served the foregoing notice and the interrogatories hereto attached upon Thomas Hines, ag't of the Virginia Coal & Iron Co., by leaving a true copy thereof with
121 Thomas Hines, at their office in Mineral County, West Virginia. And further says not.

Subscribed and sworn to this 20 day of January, A. D. 1872, before me.

JOHN CRAWFORD,
Justice of the Peace in & for said State & County.

Interrogatories referred to in the foregoing notice, and to be answered by Alexander Sinclair, Hector Sinclair, Robert Sinclair, and , witnesses to be produced, sworn, and examined under and by virtue of the annexed commission, before William E. Tutt,* com., esq., or any judge or justice of the peace of the county and State last mentioned in the within notice, in the cause therein mentioned and referred to, and now pending in the circuit court of the United States for the fourth circuit and district of West Va., wherein Daniel R. Brant is complainant and Jane Sinclair and the Virginia Coal and Iron Company, respondents, on the part of the said complainant, as follows, to wit:

Interrogatory first. What is your name, age, occupation, and place of residence?

Interrogatory second. Do you know the parties to this suit, or either of them, and which of them, and how long have you known them respectively?

Int. 3d. Did you know Robert Sinclair in his life-time? If yea, state where he lived while you knew him? What was his business?

122 Int. 4th. Was Robert Sinclair and educated man? Could he read and write?

Int. 5th. Did you know Robert Sinclair's wife? If yea, state what was her name; where did she live? If she is dead, when did she die, and where did she die?

Int 6th. How many children, if any, or descendants of children, did Robert Sinclair leave him surviving at the time of his death? Where are said children now living? What are their names? What are their ages respectively?

Int. 7th. Do you know Jane Sinclair? If yea, state what relation, if any, she is to Robert Sinclair, deceased? How old is she? Where does she now live? What is her mental condition? Is she capable of doing business?

Int. 8th. If in answer to the foregoing question, you answer that Jane Sinclair is an idiot, or insane person, state how long she has been in such mental condition, if you know?

Int. 9th. Did you ever have one or more conversations with Robert Sinclair about his will? If yea, state when and where you had such conversations, and what was said upon each occasion, at large?

Int. 10th. Did you ever hear Robert Sinclair say anything about what disposition he intended to make, or had made of his property by his will? State fully and at large what she said in that regard?

123 Int. 11th. If you ever heard Robert Sinclair say anything about giving his wife a life-estate in his property, state fully and at large what reason he gave for the same, if he gave any reason?

Int. 12th. Did you ever hear Robert Sinclair say anything as to who he intended his property to go to after the death of his wife? If yea, state all he said in that regard?

Int. 13th. Were you present when Robert Sinclair's will was made? If yea, state who was present, and all the circumstances under which the will was made.

Int. 14th. State, if you know, who wrote Robert Sinclair's will?

Int. 15th. Did you know John Junkins in his life-time? If yea, state how long you knew him, what was his business during the time you knew him.

Int. 16th. Had John Junkins any legal knowledge or education; was he a lawyer?

Int. 17th. Do you know whether Robert Sinclair had any knowledge

of the existence of a large vein of coal on his farm? If yea, state how you know the same, and everything in relation to the same fully and at large.

Int. 18th. Do you know whether it was generally supposed in the vicinity of Robert Sinclair's farm between A. D. 183 and A. D. 1840, by the neighbors and others that there was a large vein of coal on said farm? If yea, state fully and at large in relation to the same.

124 Int. 19th. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Order awarding commission to take deposition.

To the clerk of the circuit court of the United States for the district of West Virginia:

It appearing that ten days' notice has been given to the Virginia Coal and Iron Company, to file cross-interrogatories, and the said defendant having failed to file such interrogatories, or to make any appearance to said notice, it is ordered that a commission do issue directed to William E. Tutt, esq., of the village of Evansville, in the county of Preston, and State of West Virginia, or to any judge or justice of the peace, of the said county and State, to examine the within-named Alexander Sinclair, *Sinclair*, Hector Sinclair, Robert Sinclair, and Joseph W. Davis, as witnesses in the within-named cause.

J. JACKSON, JR.,
Judge D. C. U. S., D. W. Va.

JAN'Y 30TH, 1872.

Whereupon said commission was issued as directed in said order, dated 30 Jan'y, 1872.

125 The depositions of Alexander Sinclair, Robert Sinclair, & Hector Sinclair, of the county of Preston and State of West Virginia, witnesses of lawful age, produced, sworn, and examined upon their several and respective corporal oaths on the first day of February A. D. 1872, at the village of Evansville, in the county of Preston, and State of West Virginia, by me, a commissioner duly appointed by a dedimus potestatum or commission, issued out of the circuit court of the United States for the fourth circuit and district of West Virginia, with the seal of said court affixed thereto, and to me directed as such commissioner, for the examination of the said Alexander Sinclair, Robert Sinclair, & Hector Sinclair, in a certain suit and matter in controversy, now pending and undetermined in said circuit court, wherein Daniel R. Brant is plaintiff, and Jane Sinclair and The Virginia Coal and Iron Company are defendants, in behalf of said plaintiff, as well upon the interrogatories of the plaintiff and enclosed with said commission, and upon none others, the said Alexander Sinclair, Robert Sinclair, & Hector Sinclair, being each and every of them severally and respectively first duly sworn by me as witnesses in said cause, previous to the commencement of the examination of each and every of them to testify the truth, the whole truth, and nothing but
126 the , on behalf of the plaintiff, as well as the defendant, so far as they or either of them should be interrogated.

The said ALEXANDER SINCLAIR deposed and testified as follows:

Int. first. 1st. The witness says my name is Alexander Sinclair; my age is 66 years; my occupation, farmer; place of residence, Preston County, Virginia.

2d. Int. 2nd. The witness says he knows the plaintiff, D. R. Brant, and one of the defendants, Jane Sinclair, & that he has known them for 40 or 50 years; does not know the other defendant.

3d. Int. 3d. The witness says he knows Robert Sinclair; that he was his father, & that he lived on his little farm in Hampshire County, Virginia, & that his business was that of a small farmer.

4th. To the fourth interrogatory the witness says: My father, Robert Sinclair, was not an educated man; could not *wright* nor read writing after it was wr*ote*; could read print a little.

5th. To the fifth interrogatory the witness says: Robert Sinclair's wife was my mother; her name was Nancy; she lived on the farm in Hampshire County, Va., with my father; she died in Preston County, West Virginia, in Aug't, 1864.

6th. To the sixth interrogatory the witness says that Robert Sinclair left him, surviving at the time of his death, eight children. Their
127 names *was* Hugh Sinclair, Daniel Sinclair, Alexander Sinclair, Hector Sinclair, Margia King, wife of Wesley King; Jane Sinclair, and Nancy Sinclair. Alexander and Robert, & Hector & Jane, and Nancy, all live at this time in Preston Co., West Va. Daniel is dead; Hugh Sinclair lives in Mason Co., West Va.; Margia lives in Shelby Co., Ills. Hugh is about seventy-two years old; Margia about 68 years old; Alexander is 66 years old; Robert is 63 years old; Hector is 59 years old; Jane is about 56 years old, & Nancy is about 54 years old.

7th. To the seventh interrogatory the witness says that he has known Jane Sinclair ever since she was born; she is my sister; she is Robert Sinclair, deceased*ts*, daughter; she is 56 years old; she lives with our sister Nancy, in Preston County, West Virginia; she is an *e*diot or insane person, and has been ever since she was three years old; she is totally incapable of doing any business whatever.

8th. To the eighth interrogatory the witness says: She has been insane all her life, and is now totally and hopelessly insane, or at least ever since she was three years old.

9th. To the ninth interrogatory the witness says: I had several conversations with my father, Robert Sinclair, about his will, at & before the will was made, & in each and all of them he said he wanted his children to have his property at the death of my mother,
128 but that he wanted my mother to have the use of it during her life, for her support.

10th. To the tenth interrogatory the witness says: I heard Robert Sinclair say, several times, that he intended to give the use of all his property to his wife, my mother, during her life, for her support, and that, when she died, he wanted his children to have it.

11th. To the eleventh interrogatory the witness says: He gave, as his reason for willing his property in trust to my mother during her life, that, if he willed it directly to his children, they might squander it, & my mother might come to want, and so he said he would give it all to my mother for her support during her life, and at her death the children would be sure of it.

12th. To the twelfth interrogatory, the witness says that Robert Sinclair said he wanted his property all to go to his children at the death of his wife.

13th. To the thirteenth interrogatory the witness says: I was on the

farm of my father, & about the premises, before & on the day the will was made. John Junkins, Wm. Abernathy, & Thomas Abernathy was present, & my father, Robert Sinclair, was sick at the time, and had been for several days, & advised with me several times just before he
129 made his will as to the distribution of his property; & after meditating, decided, as he told me, to will everything he had, both personal & real, to my mother, Nancy Sinclair, in trust for her own use & benefit during her life only, & that, by so doing, his children would inherit it all at her death, & she would enjoy the benefit of it during her life.

14th. To the fourteenth interrogatory the witness says: John Junkins wrote Robert Sinclair's will.

15th. To the fifteenth int. the witness says he knew John Junkins for 40 years before he died, and that his business was that of a small farmer, & was a very poor man; lived on rented land, and occasionally taught small country schools, & obligated with those who employed him to teach the children to spell, & read, & write, and arithmetic to the double rule of three in Pike's old 'rithmatic, to the best of his skill & knowledge.

16th. To the sixteenth interrogatory the witness says: John Junkins had no legal education whatever, and was quite an ignorant man. He was not a lawyer by any means.

17th. To the seventeenth int. the witness says all he knows about that is, that he frequently heard his father say there was coal & other minerals in & underneath his land, & that he regarded the same as valuable.

130 18th. To the eighteenth int. the witness says he does know full well that it was universally known & believed, between the years of 1830 & 1840, & long before that, that there was in all the highest ranges of the Allegany Mountains, in the vicinity of Robert Sinclair's farm, a large vein of coal of about 14 or 15 feet in thickness, and that the same existed on Robert Sinclair's farm.

19th. To the nineteenth int., he knows that Jane Sinclair is now living with her sister Nancy in extreme poverty, in Preston County, West Virginia, and that she has not sold her interest in her father, Robert Sinclair's estate, nor has she ever been represented or personated by any one, & that she is hopelessly insane at this time; & that he well knows that Robert Sinclair meant and intended by his will to give his property, in trust, to his wife for her support, thinking thereby that she would get her support out of it, & thus preserve the rest of it for his children at his death; & so he expressed himself frequently at and about the time of making his will. And further saith not.

(Signed) ALEXANDER SINCLAIR.

Robert Sinclair's deposition.

And the said ROBERT SINCLAIR, having been first duly sworn as aforesaid, deposed and testified as follows:

131 1st. To the first interrogatory: My name is Robert Sinclair. My age is 63 years; my occupation, farmer; & place of residence, Preston County, West Virginia.

2nd. To the second interrogatory the witness says he knows the plaintiff, D. R. Brant, & Jane Sinclair, one of the defendants; & has known Jane all her life, & D. R. Brant for at least 40 years; but does not know the other defendants.

3rd. To the third interrogatory the witness says: Robert Sinclair was

his father, & that he lived in Hampshire County, Virginia, on his own little farm; that he lived by farming in a small way.

4th. To the fourth interrogatory the witness says: My father, Robert Sinclair, was not an educated man, could not wr*ight*, nor could he read writing after it was wr*ote*; he could only read print very poorly.

5th. To the fifth interrogatory the witness says: Robert Sinclair's wife was my mother; her name was Nancy; she lived with my father during his life, & for some time afterwards, on his farm in Hampshire County, Virginia, & afterwards moved with her daughter Nancy to Preston Co., West Va., where she died in August, A. D. 1864.

132 6th. To the sixth interrogatory the witness says that Robert Sinclair left him surviving at the time of his death eight children then living, & th*e*re names were Hugh Sinclair, Alexander Sinclair, Robert Sinclair, Hector Sinclair, Margia King, wife of Wesley King, & Jane Sinclair & Nancy Sinclair. Alexander & Robert & Hector & Jane & Nancy all live at this time in Preston County, West Va.; Daniel is dead; Hugh Sinclair lives in Mason Co., West Va.; Margia lives in Shelby Co., Ills. Hugh is about 72 years old; Margia about 68 or 70 years old; Alexander is 66 years old; Robert is 63 years old, & Hector is 59 years old, & Jane is about 56 years old, and Nancy is about 54 years old.

7th. To the seventh int., the witness says, that he knows Jane Sinclair for 56 years; she is my sister; she is my deceased father Robert Sinclair's daughter; she is 56 year' old; she lives at this time with our sister Nancy, in Preston County, West Va.; she is an *e*diot or insane person, and has been ever since she was three years old; she is totally incapable of doing any business whatever.

8th. To the eighth interrogatory the witness says: She has been insane ever since she was three years old, or about 53 years.

9th. To the ninth interrogatory the witness says: I lived at home with my father and frequently heard him talk and say that
133 he did not think he would live long and he wanted to ar'ange his business, that his wife (my mother) could have & hold his property for her use & benefit during her life, so that at her death the children would have something.

10th. To the tenth interrogatory the witness says: Robert Sinclair frequently expressed a desire that his property should be so le*f*t when he died, that his wife should own & enjoy the use of it while she lived, for her support, & desired that his children should inherit it at her death.

11th. To the eleventh int. the witness says: He seemed to have a desire to will his property to his children direct, as he intended them to have it, but wanted his wife to have the use of it during her life, & then at her death they, the children, would get it; but for fear the children might squander it & his wife might come to want he concluded to will it to his wife for her support during her life.

12th. To the 12th int. the witness says: Robert Sinclair plainly said he wanted his property all to go to his children at the death of his wife.

13th. To the thirteenth int., the witness says that he was at home at his father's residence when the will was made & that John Junkins & Wm. Abernathy & Thomas Abernathy w*as* present when the will was made & that Robert Sinclair was somewhat unwell &
134 talked & advised with *with* my brother Alexander, with regard to the distribution of his property & it was decided that my father, Robert Sinclair, would & did, as he understood it, will all his property to his wife, Nancy, (my mother,) in trust, for her support & for her use

during her life, and at her death he said that then his children would certainly get it.

14th. To the fourteenth interrogatory the witness says: John Junkins wrote Robert Sinclair's will.

15th. To the fifteenth int., the witness says that he knows John Junkins ever since he was a boy until he, Junkins, died, & that his business was that of a small farmer, & that he was a very poor man & lived on rented land, and once in a while would teach a small country school, & that his mode of teaching was, as his articles said, to teach children to spell, read, & *right* & arithmatic, in Pike's old 'rithmatic to the double rule of three, to the best of his ability.

16th. To the sixteenth int. the witness says: John Junkins had no legal education whatever, & was a man of limited knowledge, & was not a lawyer or anything of the kind.

17th. To the seventeenth int., the witness says he has heard his father frequently speak of the existence of coal & other mineral' in his farm & that it was more or less valuable.

135 18th. To the eighteenth int., the witness says ever since he can remember, it was generally understood & considered in the neighborhood of Robert Sinclair's farm & in all the higher ranges of the Al'egany Mountains, in that region, that there was a large vein of superior coal of some 14 or 15 feet in thickness, and more particularly & later between the years of 1830 & 1840 it was certainly understood all over that county that such coal existed there.

19th. To the nineteenth interrogatory the witness says that Jane Sinclair is now living with her sister Nancy, in extreme poverty, in Preston Co., West Va., & that she still owns her interest in her father, Robert Sinclair's farm, nor has she ever as yet been represented by any one, and that she is at this time hopelessly insane, & he knows positively that Robert Sinclair meant & intended by his will only to give his property in trust to his wife for her support, thinking thereby that she would get her support out of it during her life, & that the property at the death of his wife would be preserved for his children, and so he expressed himself frequently at and about the time his will was made. And further witness saith not.

(Signed) ROBT. SINCLAIR.

Hector Sinclair's deposition.

And the said HECTOR SINCLAIR having been first duly sworn
136 as aforesaid, deposed and testyfied as follows:

1st. To the first interrogatory the witness says that his name is Hector Sinclair; that his age is 59 years *old*; his occupation farmer; & his residence is in Preston County, West Va.

2nd. To the second interrogatory the witness says he knows the plaintiff, D. R. Brant, & one of the defendants, Jane Sinclair, & that he has known D. R. Brant for at least 40 years, & Jane Sinclair for 56 years, & that he does not know the other defendants.

3rd. To the third interrogatory the witness says that Robert Sinclair was his father, & that he lived on his little farm in the Allegany Mountains, in Hampshire County, Va., & his business was that of a small farmer.

4th. To the fourth interrogatory the witness says that Robert Sinclair was not an educated man; he could not read writing or wr*ight*, & could only read print very little.

5th. To the fifth interrogatory the witness says: Robert Sinclair's wife

was my mother; her name was Nancy; she lived with my father, Robert Sinclair, on his farm in Hampshire County, Va., until his death, & some time after his death she moved to Preston Co., West Va., where she died in Aug't, 1864.

6th. To the sixth interrogatory the witness says: Robert Sin-
137 clair left him surviving eight children at the time of his death, there names are Hugh Sinclair, Daniel Sinclair, & Margia King, wife of Wesley King, & Alexander Sinclair, Robert Sinclair & Hector Sinclair & Jane Sinclair and Nancy Sinclair. Hugh is 72 years old, & Daniel is dead, & Margia is 68 or 70 years old; Alexander is 66 years old, and Robert is about 63 years old, & Hector is 59 years old, and Jane is 56 or 57 years old, & Nancy is 54 years old. Alexander & Robert & Hector & Jane & Nancy are all living in Preston Co., West Va.; the others have moved West & I cannot exactly locate them.

7th. To the seventh interrogatory, the witness says that he knows Jane Sinclair for more than 50 years; she is 56 years old; she is my sister; she is Robert Sinclair's daughter; she lives at this time with our sister Nancy, in Preston Co., West Va. She is an *e*diot, and has been ever since she was three years old; she is totally incompetent to do any business whatever.

8th. To the eighth int. the witness says: Ever since she was three year old she has been an *e*diot or insane person.

9th. To the ninth int. the witness says: I being the youngest one of my father's boy', & under age, he never talked with me about his
138 business, and therefore I never had any conversation with him about his will.

10th. To the tenth interrogatory the witness says: I don't remember of ever hearing him say anything about it.

11th. To the eleventh int., the witness says he never heard his father say anything specially in relation to giving his property to anybody.

12th. To the twelfth int. the witness says: Being quite young, his father, Robert Sinclair, never coun*c*illed with him about his business.

13th. To the 13th int., the witness says he was not present at the par*t*icular time the will was made, and knows nothing, only from hearsay, about it.

14th. To the fourteenth int. the witness says: John Junkins wrote Robert Sinclair's will.

15th. To the fifteenth int., the witness says he knew John Junkins in his life-time, & that he knew him previous to his death about 35 years. His business was a small farmer, & lived on rented land, & once in a while taught a country school & obligated with those who sent children to him to teach them to spell & read & wr*i*ght & 'rithm*a*tic—as far as the double rule of three in Pike's old 'rithm*a*tic—to the best of his knowledge & ability.

16th. To the sixteenth int., the witness says that John Jun-
139 kins' legal education was very limited indeed, and he had no knowledge of law whatever; he was not a lawyer.

17th. To the seventeenth int., the witness says that he does not know whether Robert Sinclair had any knowledge of the existence of coal in his farm or not.

18th. To the eighteenth int., the witness says that he does know that between the years 1830 & 1840 it was generally known that in the higher mountains of the Alleganies, such as my father's farm, and in the vicinity of Robert Sinclair's farm, that what was called the "big

vein of coal," existed & was regarded of great value among the neighbors and others.

19th. To the nineteenth int., the witness says that he can think of but little else that would be of interest to either party; & further witness saith not.

(Signed) HECTOR SINCLAIR.

I, William E. Tutt, of the village of Evansville, in the county of Preston, and State of West Virginia, a commissioner duly appointed to take the depositions of Alexander Sinclair, Robert Sinclair, & Hector Sinclair, witnesses whose names are subscribed respectively to the foregoing depositions, do hereby certify that previous to the commencement of the examination of said Alexander Sinclair, Robert Sinclair, and Hector Sinclair as witnesses in said suit between said
140 Daniel R. Brant, plaintiff, and said Jane Sinclair and the Virginia Coal and Iron Company, defendants, they and each of them were duly and respectively sworn by me to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between said plaintiff and defendant so far as they and each of them should be respectively interrogated concerning the same; that the said depositions were taken at Evansville, West Virginia, in the county of Preston aforesaid, on the first day of February, A. D. 1872; and that after said depositions were taken by me as aforesaid, the foregoing interrogatories and answers thereto, as written, were read over to said witnesses, the individual deposition of each being respectively read to him, and that thereupon the same were each signed respectively by the witness giving the same, and sworn to respectively by the witnesses giving the same, before me, the oath being administered by me at the place and on the day and year last aforesaid.

(Signed) WILLIAM E. TUTT. [SEAL.]
Commissioner.

Commissioner's fee, $10,00. Received payment.

Exception endorse' by defts. counsel.

The defendant The Virginia Coal & Iron Company excepts to so much of the within testimony of the several witnesses as relates to the
141 declarations and statements of Robert Sinclair as to the manner in which he intended to dispose of his *of his* property, and the manner in which he had disposed of it, and the opinions and belief of the witnesses.

(Signed) JOHNSON & LEE,
For Defts.

UNITED STATES OF AMERICA:

In the circuit court of the United States for the fourth circuit and district of West Virginia.

DANIEL R. BRANT, COMPLAINANT,
vs.
JANE SINCLAIR & THE VIRGINIA COAL AND IRON COMPANY, RESPONDENTS. } In chancery.

To the above-named defendants:

Take notice that on the thirtieth day of January, A. D. 1872, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard,

the undersigned will sue out of the office of the clerk of said court a dedimus potestatum, or commission, under the seal of said court, and directed to William Harvey, esq., of the village of Deer Park, in the county of Allegheny, and State of Maryland, or to any judge or justice of the peace of the county and State last above mentioned, to take the deposition of Elisha D. McRobie upon the interrogatories hereto attached, to be read in evidence on the part of the complainant on the hearing of the above-entitled cause now pending in the said fourth
142 circuit court, on the equity side thereof; when and where you can appear and file cross-interrogatories and join in said commission if you wish. Dated this 20th day of January, A. D. 1872.

JACKSON & SMALL,
For said Compl't.

STATE OF MARYLAND,
Allegheny County, ss:

Daniel R. Brant, being first duly sworn, deposes and says, that on the twentieth day of January, A. D. 1872, he served the foregoing notice and the interrogatories hereto attached upon Thomas Hines, agt. of the Virginia Coal & Iron Co., by leaving a true copy thereof with Thomas Hines, at there office in Mineral County, West Virginia; and further says not.

Subscribed and sworn to this 20th day of January, A. D. 1872, before me.

(Signed) JNO. CRAWFORD,
Justice of the Peace for the said State and County.

To the clerk of the circuit court of the United States for the district of West Virginia:

It appearing that ten days' notice has been given to the Virginia Coal and Iron Co'y to file cross-interrogatories, and the said defendant having failed to file such interrogatories, or to make any appearance to said notice, it is ordered that a commission do issue, directed to William Harvey, esq., of the village of Deer Park, of the county of Alle-
143 gheny, and State of Maryland, or to any judge or justice of the peace of the said county and State, to examine the within-named Elisha McR. as a witness in the within-named cause.

(Signed) J. J. JACKSON, JR.,
Judge D. C. U. S. D. W. Va.

JANUARY 30TH, 1872.

Whereupon a commission was issued in obedience to the foregoing order.

The deposition of Elisha D. McRobie, of the county of Alleghany and State of Maryland, a witness of lawful age, produced, sworn and examined upon his corporal oath on the ninth (9th) day of February, A. D. 1872, at the vil'age of Deer Park, in the county of Alleghany, by me, a commissioner duly appointed by a dedimus potestatum or commission, issued out of the clerk's office of the circuit court of the United States for the fourth circuit and district of West Virginia, with the seal of said court affixed thereto, and to me directed as such commissioner for the examination of the said Elisha D. McRobie in a certain suit and matter in controversy now pending and undetermined in *a* said circuit court, wherein Daniel R. Brant is plaintiff, and Jane Sinclair and The

Virginia Coal and Iron Company are defendants, in behalf of said plaintiff, as well upon the interrogatories of the plaintiff as upon commission, and upon none others. The said Elisha D. McRobie, being first
144 duly sworn by me as a witness in said cause, previous to the commencement of his examination, to testify the truth, the whole truth, and nothing but the truth on behalf of the plaintiff as well as the defendants, as far as he should be interrogated, deposed and testified as set forth in the following and annexed interrogatories and answers thereto, on the day and year first above-written.

Given under my hand and seal.

(Signed) WILLIAM HARVEY, [SEAL]
Commissioner.

Interrogatories referred to in the foregoing notice, and to be answered by Elisha D. McRobie, a witness to be produced, sworn, and examined, under and by virtue of the annexed commission, before William Harvey, esq., or any judge or justice of the peace of the county and State last mentioned in the within notice, in the cause therein mentioned and referred to, and now pending in the circuit court of the United States for the fourth circuit and district of West Virginia, wherein Daniel R. Brant is complainant, and the Virginia Coal and Iron Company are respondents, on the part of the said complainant, as follows, to wit:

Elisha D. McRobie's deposition.

Interrogatory first. What is your name, ag', occupation, and place of residence?

145 Answer to 1st int. My name is Elisha D. McRobie; my age is eighty-one (81) years *old*; my occupation has been farmer; my place of residence, Allegany County, Maryland.

Int. 2d. Do you know the parties to this suit, or either, and which of them; and how long have you known them respectively?

Answer to 2nd. I know the plaintiff, D. R. Brant, and have known him for at least thirty years. I also know Jane Sinclair, one of the defendants, and have known her for forty years or more. The other defendants I do not know.

Int. 3d. Did you know Robert Sinclair in his life-time? If so, state how long you knew him, where he lived when you knew him. What was his business? Was he an educated man? Could he read or write?

Answer to 3d. I knew Robert Sinclair in his life-time for at least thirty years previous to his death; he lived on his little farm, in the Allegany Mountains, in Hampshire County, Virginia, now Mineral County, West Virginia; he was not an educated man; he was a very illiterate man; could not wri*ght* or read writing after it was wro*te*. I think he could read print a little.

Int. 4th. Did you know Robert Sinclair's wife? If so, state what was her name, where she lived while you knew her? If she is dead, when did she die, and where did she die?

146 Answer to 4th. I knew Robert Sinclair's wife for thirty or forty years; her name was Nancy; she lived with he' husband, Robert Sinclair, on his little farm in Hampshire County, Va., until some years after the death of her husband; she moved with her daughter, Nancy Davis, to Preston County, West Virginia, where understood she died about the year of A. D. 1864.

"Int. 5th. Did you ever have one or more conversations with Robert Sinclair about his will? If so, state when and where you had such conversation or conversations, and what was said upon such occasion, fully and at large.

Answer to int. 5th. I had two conversations with Robert Sinclair at his residence; the first one two or three days before he made his will. I happened at his house and stayed over night with him, and he advised with me in both conversations, and conversed freely and at some length, and his conversation was mainly about his will & the distribution of his property. He said he did not think he was going to live long, and he wanted to arrange his business so as that his wife could hold the property for her support during her life; that he meant and intended his children to have his property, but he thought it best and safest to give it all to his wife, in trust for her support and for her use during her
147 life only; and then at her death the children would be sure of it. This was the substance of both conversations.

Int. 6th. If Robert Sinclair, in talking to you about making his will, said anything about his children, state what he said.

Answer to int. 6th. He said if he willed his property direct to his children, they might squander it, and his wife might come to want, and he wanted her to have the use of it during her life, and that he knew she would not squander it away from her children; and that he intended to so arrange it in his will that she could not sell the real estate, but that he wanted her to have the benefit and use of it during her life, and then at her death the children would get it.

Int. 7th. If in conversation with Robert Sinclair he talked to you about giving his wife a life-estate in his property, then state what he said to you as his reason for giving his property in that way, if he gave any reason.

Answer to int. 7th. He did say he wanted to give his wife a life-estate only in his property, and gave as his reason that his children *was* a little reckless, or at least some of them, and he thought it would be more safe to will it all direct to his wife for her support during her life, and that she could live off of it and would keep it safe, or at least
148 the most of it, and especially the real estate, for his children at her death, as he positively and clearly expressed a determination that his wife should not be permitted to sell or dispose of his real estate for any longer or greater period than during her natural life, but that she should have the use of it during her life.

Int. 8th. Did Robert Sinclair ever say anything to you as to who he intended his property to *who he intended his property to* go to after the death of his wife? If yea, state all he said in that regard.

Answer to int. 8th. He plainly said frequently, in the conversations I had with him, that he intended his property to go to his children after the death of his wife.

Int. 9th. Did you know one John Junkins in his life-time? If yea state how long you knew him. What was his business during the time you knew him?

Answer to int. 9th. I knew John Junkins before he died for at least forty years. His business was that of a small farmer; he was a very poor man; always lived on rented land, and sometimes taught common country schools, and in his contracts or articles of agreement with those who sent their children to school to him he agreed that he would
149 teach the children to spell and read and write and 'rithmetic—Pike's old arithmetic to the double rule of three—to the best of his skill and knowledge.

Int. 10th. Had John Junkins any legal knowledge or education? Was he a lawyer?

Answer to int. 10th. John Junkins had no legal knowledge whatever; was a very common-place man, and totally ignorant in matters of law; he was not a lawyer or anything of the kind.

Int. 11th. How long have you resided in the Allegany Mountains? And if you resided in the vicinity of Robert Sinclair's farm, state how long you resided there.

Answer to int. 11th. I have resided in the Allegany Mountains ever since I was born*d*, or for eighty-one years, and never live' anywhere else except when I was in the Army of United in the war of 1812, and I now live some ten miles from Robert Sinclair's farm, and never live' further away, but sometimes much nearer to it.

Int. 12th. Did you ever have any conversation with Robert Sinclair concerning a vein of coal on his farm? If yea, state fully and at large what such conversation was.

Answer to int. 12th. I heard Robert Sinclair speak of the exist-
150 ence of coal and other minerals in his farm, and that he thought they would become very valuable. I don't know that he mentioned the size of the vein.

Int. 13th. State, if you know, whether Robert Sinclair aware of the *the* existence of a large vein of coal on his farm; and, if so, how you know the same.

Answer to int. 13th. I do not know certainly that Robert Sinclair was aware of the size or thickness of the vein or veins of coal in his farm, but I do know that he was fully aware of the existence of very valuable veins of coal in his farm, for he told me so in conversations with him.

Int. 14th. Do you know whether it was generally supposed in the vicinity of Robert Sinclair's farm, between the years A. D. 1830 and A. D. 1840, by the neighbors and others, that there was a large vein of coal on said farm? If yea, state fully and at large in relation to the same.

Answer to int. 14th. It was and has been universally believed and known between the years of 1830 & 1840, and before and since, in the neighborhood and vicinity of Robert Sinclair's farm, that there was a large vein of coal commonly called the "big vein of coal," and of the thickness of 14 to 15 feet, and of a very superior quality, on or in said Robert Sinclair's farm.

151 Int. 15th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that *they* may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Robert Sinclair was a Scotchman, and came to this country with his family in early day, and was very ignorant of the laws and usages of this country; and I, being also a Scotchman, but born in this country, I made his acquaintance when he first came to this country, and we were frequently together, and he was very communicative to me, and I therefore know full well what his intentions were; and I am confident that he meant only by his will to make his wife, as it were, the guardian of his property, and for her support during her life only, and at his death he wanted his children to inherit it, as I have frequently heard him so express himself. And further the witness saith not, after being duly sworn & examined.

(Signed) ELISHA D. his + mark. McROBIE.

Teste: WM. HARVEY.

I, William Harvey, of the vil'age of Deer Park, in the county of Allegheny, and State of Maryland, a commissioner duly appointed
152 to take the deposition of said Elisha D. McRobie, a witness whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of said Elisha D. McRobie as a witness in said suit between said Daniel R. Brant and said Jane Sinclair and The Virginia Coal and Iron Company, he was duly sworn by me to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between said Daniel R. Brant and Jane Sinclair and The Virginia Coal and Iron Company, so far as he should be interrogated concerning the same; that the said deposition was taken at the vil'age of Deer Park in the county of Alleghany aforesaid, on the ninth (9) day of February, A. D. 1872; and that after said deposition was taken by me as aforesaid the foregoing interrogatories and answers thereto, as written, were read over to said witness, and that thereupon the same was signed and sworn to by said deponent befor' me, the oath being administered by me at the place and on the day and year last aforesaid.

(Signed) WILLIAM HARVEY, [SEAL.]
Commissioner.

Commissioner's fees, $10.00, paid by D. R. Brant.

Defendants' exceptions to the foregoing deposition, thereon endorsed.

153 The defendants The Virginia Coal & Iron Company excepts to all the within evidence of the declarations of Robert Sinclair as to his intention to dispose of his property and as to the manner in which he had disposed of it, and to the witnesses' opinions on the subject.

(Signed) JOHNSON & LEE,
For Defendant.

At a circuit court of the United States for the district of West Virginia, continued and *and* held at Parkersburg, on Wednesday, the 7th day of August, 1872.

DANIEL R. BRANT, COMPL'T,
vs.
THE VIRGINIA COAL AND IRON COMPANY AND Jane Sinclair, defts. } In chancery.

On motion of complainant's counsel, it is ordered that the testimony of the complainant, Daniel R. Brant, be taken in said cause before Barna Powell, esq., one of the commissioners of said court, at his office in the city of Parkersburg, in said district, at the hour of three o'clock p. m., this 7th day of August, A. D. 1872, in pursuance of the amendment of the 67th rule in equity of said court, of date March 17th, 1862, and that said commissioner report the same to said court immediately, to be read on the hearing of said cause.

A copy. Teste:

J. B. JACKSON, *Clk.*

154 In the circuit court of the U. S., dist. of West Virginia.

DANIEL R. BRANT, PLFF.,
vs.
THE VIRGINIA COAL AND IRON COMPANY and Jane Sinclair, defts.

To the Virginia Coal and Iron Company and Jane Sinclair:

Tak' notice that the deposition of Daniel R. Brandt will be taken at the office of Barna Powell, in the city of Parkersburg, in the county of Wood, and State of West Va., on the 7th day of August, 1872, at the hour of 3 p. m., in accordance with an order of the circuit court of the U. S. for said district, now in session, to be read in evidence on the hearing of the above cause, in behalf of the said plaintiff. If from any cause the taking of the same shall not be *re*commended, or, being commenced, shall not be completed on that day, the taking of the same will be adjourned from time to time until they are completed.

Yours, &c.,

BARNA POWELL,
U. S. Comr.

(Return endorsed:) Executed the within notice by serving a copy thereof on Okey Johnson, defendants' counsel, and serving a copy on W. H. Hatcher, guardian ad litem of Jane Sinclair, at 2 o'clock p. m., August 7, 1872.

H. SLACK,
U. S. Mar., D. W. Va.

Marshal's fee, $4.00.

155 Depositions of sundry witnesses, taken before me, Barna Powell, a United States commissioner for the district of West Virginia, at my office in the city of Parkersburg, in the county of Wood, in said district, in pursuance of the annexed order of the circuit court of the United States for the district of West Virginia, on the 7th day of August, 1872, commencing at 3 o'clock p. m. of said day, to be read in evidence on behalf of the plaintiff in a cause pending in said court, wherein Daniel R. Brant is complainant, and The Virginia Coal and Iron Company and Jane Sinclair are defendants.

John J. McKinnon appeared as counsel for the plaintiffs. Okey Johnson, counsel for The Virginia Coal and Iron Company, also appeared.

DANIEL R. BRANT, a witness for the plaintiff, being by me first duly examined, cautioned, and sworn to testify the whole truth, deposes as follows:

Ques. 1st. What is your name, age, place of residence, and occupation in life?

Ans. Daniel R. Brant; 51 years old; reside temporarily in Oregon. I regard Chicago, Ill., as my home. I am a merchant since 1858. I have lived in Iowa and Illinois up to last spring; since last spring I have been in Oregon. From 1855 to 1862 I lived in Iowa; from 1862
156 until last April I lived in Chicago, Illinois; before 1855 I lived in Allegheny County, Maryland, adjoining Hampshire County, Virginia. I knew Nancy Sinclair in her life-time. I knew her since I was a small boy, until she removed to Virginia, about 1855. I knew her personally and intimately about 2 years. I was jointly, with Hector Sinclair, the owner of a bond given by the Union Potomac Company to said Nancy Sinclair.

Ques. 2. What was the amount of the bond?

Ans. Originally it was $1,100, with accumulated interest at the time I bought.

Qus. 3. Was any steps ever taken towards the collection of said bond? If so, what was done? State fully.

(Objected to by defendants' counsel because it is not the best evidence.)

Ans. I think there was. Mr. Hector Sinclair, so far as I know, proceeded to enforce the collection of the bond in the courts of Hampshire Co., Va, I did not do anything in connection with its collection at that time. Some time subsequent, while on a collection tour through that county, I accidentally met with an old friend of mine—I met with Mr. Patrick Hamill, and in conversation with him in regard to the collection of sundry old claims, I mentioned the collection of this
157 bond. Mr. Hamill, in response thereto, stated that he frequently saw the attorneys from Romney in Piedmont, and might be of service to me in pushing them up in my collections. I told he could render me a service in aiding me in making my collections. Mr. Hamill said it would be desirable for me to give him a certificate, stating that I desired him to "punch them up." I did so. Mr. Hamill remarked, in the same conversation, and at the same time, that I mustn't expect to realize much out of it; that there was nothing being sold to make it, except the life-time interest of old Mrs. Sinclair (Nancy) in the lands, but that life-time interest wouldn't bring much, as she was an old woman. I think he further remarked that it was universally remarked in that county that she only had a life-time interest in the land.

(Objected to by defendant's counsel because the evidence details conversations with Patrick Hamill, and if made for the purpose of contradicting him, no foundation has been laid for it.)

Ques. 4. Did you ever see the papers filed in the foreclosure suit to collect said bond?

Ans. No, sir; I saw copies of them about 2 years ago, just before commencing this suit; never saw anything of them until then.

158 Ques. 5. Did you know or have any knowledge of their contents?

Ans. Not until I saw copies of them about 2 years ago.

Ques. 6. Did you have any knowledge or information or belief that in the proceeding to collect said bond the fee-simple of the land or property described in the bill of complaint in this suit was sold or was to be sold by the commissioners appointed in that suit or by any one else?

Ans. No, sir.

(Objected to by deft.'s counsel, for the reason that plaintiff is estopped from denying knowledge of the fact.)

Ques. 7. State what, if anything, you understood was to be sold in the proceeding to enforce payment of said bond, and how and from whence you understood it.

I understood the life-time interest of Mrs. Sinclair was to be sold, and nothing else. I understood it first from the language of the will, and also understood it when I bought the property from the heirs, and from all the counsel I have ever had upon it, which has been quite numerous, and likewise from Mr. Patrick Hamill from the conversation I had with him as detailed in my former answer.

(This answer is objected to by deft.'s counsel because the witness is estopped from denying what was sold in that suit.)

159 Ques. 8. Were you acquainted with the value of coal lands in Hampshire Co., Virginia, in the years 1858 & 1859?

Ans. In the vicinity of the lands in question, I was.

Ques. 9. What was the fee-simple value of the property described in the bill in this suit in the years 1858 and 1859.

Ans. All of it that contained what is known and styled the "big vein" of coal in that coal county was worth at least $1,000 an acre, and there is at least from 50 to 60 acres of coal on this land. The tract of land was then, in 1858 and 1859, worth $60,000.

Ques. 10. Did you ever, in writing or otherwise, authorize Patrick Hamil, or any one else, to sell the fee-simple title to the land described in the bill in this case?

Ans. I did not.

Ques. 11. Did you ever get the money on the bonds?

Ans. A small portion of it; I think it was in the neighborhood of $500. I received it in Romney, Hampshire County, Va., in the fall of 1867, while on a collecting tour.

Ques. 12. What is the present value of the land described in this bill?

Ans. From all the sources of information I can get, it is worth from $100,000 to $500,000.

Ques. 13. Did you ever part or offer to part with your interest in the property described in the bill?

160 Ans. No; after having bought it I might have talked about selling it. I have never parted with it directly or indirectly.

Cross-examined by defendants' counsel:

I think Nancy Sinclair was over 70 years old when she died. I learned from her son Hector that she died in 1864. I don't know of my own knowledge when she died. No one but Hector Sinclair was present in the conversation with Pat. Hamill that I remember of. I think Hector Sinclair was present, but am not sure that he was. I received the $500 payment on the bond from Mr. Robert White. I think he was special commissioner.

Ques. 1st. Did not Mr. White pay you the $500 as special commissioner?

Ans. I think he did. I will qualify this answer by saying that my impression of the word "commissioner" is derived from an examination of *of* the papers after I got copies of them, as above stated. Mr. White paid it to me as the proceeds of the sale of the life-estate of Mrs. Sinclair in the property in question.

(The counsel for the defendant objects to the answer, and disclaims sking him for what Mr. White said to him at the time he paid him the money.

The counsel for the plaintiff objects to the question and answer as improper on cross-examination.)

161 Ques. 2. What was that land worth for agricultural purposes in the years 1858 and 1859?

(Objected to by plaintiff's counsel as improper on cross-examination.)

Ans. From $2,000 to $3,000; perhaps $3,000.

Ques. 3. How do you arrive at your conclusions that coal-land in the vicinity of the Sinclair land, with the "big vein" in it, as you call it, was worth $1,000 an acre in 1858–'9?

Ans. Because but a few years previous to that time, and before I left that country in 1855, I knew of several pieces and heard of several pieces of mountain-land in that vicinity, and containing the "big vein" of coal, selling for $1,000 an acre, and it didn't lose but increased in value in the next 3 years.

Ques. 4. Who sold land in that vicinity at $1,000 per acre; and to whom was it sold?

Ans. I disremember the parties that purchased. I think they were companies, but my recollection is that what was known as the Sharpless farm, the Staub farm, the Potter farm, the Kountz farm, and others in the same coal basin, and about the same distance from railroads, and containing this same vein of coal, or as many acres as contained the "big vein" of coal, sold for about $1,000 per acre; I think in some instances for a little less. I don't know that Kountz, Staub, and Sharpless sold the farm themselves. I can't answer as to who sold them. Daniel Staub and the other heirs got the money.

162 Ques. 5. I asked you to state who sold and who purchased and who received the money for the coal-lands you refer to?

Ans. I can't give the names further than I have done of either parties; my information in this respect is based upon the hearsay of the country, except Daniel Staub himself, who told me he got about $1,000 an acre for the coal-land.

Ques. 6. How do you know there are 60 acres of coal on the land in controversy in this suit?

Ans. I derive my knowledge from what I know of the land myself, and what the heirs told me when I bought them out.

Ques. 7. Is the coal in the land exposed?

Ans. It was not at the time I purchased it; it is now. It is opened now by the men who are taking my coal.

Ques. 8. How can you ascertain the amount of this land that contains coal?

Ans. From my knowledge of the coal-basin in that country, and from having opened out the veins myself.

Ques. 9. You say in 1858 and 1859 this land was worth $60,000, and is now worth from $100,000 to $500,000; why such an increase in value?

Ans. From the increased demand of coal, and in 1859 we had a gold basis, and now have a currency basis, and developments of the

163 country, and from the increased reputation of the character of this specific vein of coal, in the eastern markets.

(Signed) D. R. BRANT.

UNITED STATES OF AMERICA,
District of West Virginia, ss:

I, Barna Powell, a commissioner duly appointed by the circuit court of the United States for the district of West Virginia, under and by virtue of the "Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20, 1872, do hereby certify that the reason for taking the foregoing deposition is, in pursuance of an order made by the circuit court of the United States for the district of West Va., dated August 7th, 1872, a copy of which order is hereto attached, that a notification of the time and place of taking said deposition signed by me, was made out and served on Wm. H. Hatcher, guardian ad litem, and Okey Johnson, counsel for the defendant, residing in Parkersburg, W. Va., on the 7th day of August, 1872, to be present at the taking of the deposition, if they might think fit, of which notice a copy is hereto attached, marked "A." That on the 7th day of August, 1872, at 3 o'clock p. m., I was attended by the counsel for the plaintiff & defendant The Virginia Coal and Iron Company, and by the said witness, and the said witness was by me carefully examined and sworn to testify the truth, and the

164 testimony by him given was by me reduced to writing, and thereafter subscribed by the said witnsss in my presence, and that I

am not of counsel or attorney to either of the parties, nor in any way interested in the event of the cause named in the said caption.

(Signed) BARNA POWELL,
U. S. Commissioner for the Dist. of West Va.

Costs taking depositions: comr., $6.52; marshal's fee, 4.00—$10.52.

STATE OF WEST VIRGINIA,
Wood County, ss:

In the circuit court of the United States for the district of West Virginia.

DANIEL R. BRANT, COMPLAINANT,
vs.
THE VIRGINIA COAL AND IRON COMPANY and Jane Sinclair, defendants. } In chancery.

To the Virginia Coal and Iron Company and Jane Sinclair:

Take notice that on the sixteenth day of November, A. D. 1872, at twelve o'clock noon of said day, or as soon thereafter as counsel can be heard, the undersigned will sue out of the office of the clerk of the said circuit court of the United States aforesaid a dedimus potestatum or commission, under the seal of said court, and directed to W. E. Tutt, esq., of the town of Evansville, in the county of Preston, and State
165 of West Virginia, or to any judge or justice of the peace of the county and State last above mentioned, to take the depositions of Hector Sinclair and William Pierce, upon the interrogatories hereto attached, to be read in evidence on the part of the complainant on the hearing of the above-entitled cause now pending in the said circuit court, on the chancery side thereof; when and where you can appear and file cross-interrogatories and join in said commission, if so you wish. Dated this day of , A. D. 187 .

JACKSON & SMALL, &
MIKINNONS & BRANT,
Attys. for said Brant.

I hereby acknowledge service of the foregoing notice and attached interrogatories by a copy thereof this fifth day of November, A. D. 1872.

W. H. HATCHER,
Guardian ad litem for said Jane Sinclair.

STATE OF WEST VIRGINIA,
Wood County, ss:

W. H. Hatcher, being first duly sworn, deposes and says that on the fifth day of November, A. D. 1872, he served the foregoing notice and the interrogatories hereto attached upon Okey Johnson, attorney for the Virginia Coal and Iron Company, by leaving a true copy thereof with said Johnson; and further says not.

(Signed) W. H. HATCHER.

166 Subscribed and sworn to this fifth day of November, A. D. 1872, before me.

(Signed) BARNA POWELL,
U. S. Commissioner.

Interrogatories referred to in the foregoing notice, and to be answered by Hector Sinclair and William Pierce, witnesses to be produced, sworn, and examined, under and by virtue of the annexed commission, before W. E. Tutt, esq., or any judge or justice of the peace of the county and State last mentioned in the within notice, in the cause therein mentioned and referred to, and now pending in the circuit court of the United States for the circuit and district of West Virginia, wherein Daniel R. Brant is complainant and The Virginia Coal and Iron Company and Jane Sinclair are defendants, on the part and behalf of said complainant, as follows, to wit:

Interrogatory first. What is your name, age, occupation, and place of residence?

Interrogatory second. Do you know the parties to this suit, or either and which of them; and how long have you known them respectively?

Int. 3d. Do you know the premises described in the bill in this case, formerly the property of Robert Sinclair, deceased, lying near the town of Piedmont, in the State of West Va., and the subject of the controversy in this suit?

167 Int. 4th. Do you know of a sale being made of an interest in said premises by commissioners appointed by the circuit court of Hampshire County, Virginia? If yea, state when and where such sale was made, who was present, and who was the purchaser at such sale.

Int. 5th. Do you know what interest was offered for sale in said land at such sale? If yea, state all you know in this regard, and how you know it, fully.

Int. 6th. If in answer to the fourth interrogatory you say Patrick Hamill was the purchaser at such sale, state whether you ever heard him, said Hamill, say anything about what interest he purchased in said land at such sale; and if he, said Hamill, said anything in this regard, state when and where he said it, and what he said, fully and at large.

Interrogatory 7th. If in answer to the fourth interrogatory you say said Hamill was the purchaser at said sale, state if you know for whom he made such purchase; state anything you may know in this regard, and how you know it, fully and at large.

Interrogatory 8th. Do you know what was the value, at the time of such sale, of the fee-simple title to land having the big or fourteen-foot vein of coal on it or in it, and situated as *as* the land in contro-

168 versy was? If you do know the value of such land, state what the same was per acre, and how you know the same.

Interrogatory 9th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination? If yea, set forth the same fully and at large in your answer.

Cross-interrogatories:

1. State where you resided at the time of the sale mentioned in 4 interrogatory-in-chief, and name the commissioners by whom the sale was made.

2. State if you know of any land containing the big vein of coal lying in Hampshire County, now Mineral, West Va., near the Sinclair tract, sold at or about the time of the sale referred to above. If so, state the tract, the name of the owner, and of the purchaser, and the price sold at.

3. Are you or either of you children of Robert Sinclair, decd., or related to or connected with his children? Have either of you claimed

an interest in the Sinclair tract, and sold and conveyed said pretended interest or claim to Danl. R. Brant?

DANIEL R. BRANT
vs.
169 THE VIRGINIA COAL AND IRON COMpany et al.

In the cir. ct. U. S., district of West Virg'a.

Cross-interrogatories filed in the above-entitled cause by the defendants this 16th day of November, 1872.
Teste:

J. B. JACKSON, *Clerk.*

In the circuit court of the United States for the fourth circuit and district of West Virginia.

DANIEL R. BRANT
vs.
THE VIRGINIA COAL AND IRON COMPANY and another.

Notice having been given the above-named defendants that the plaintiff would, on this 16th day of November, 1872, apply to this court for an order to take the depositions of Hector Sinclair and William Pierce, at Evansville, Preston County, West Virginia, and appoint an examiner to take said depositions, on motion of said plaintiff the court doth appoint W. E. Tutt an examiner to take the testimony of said Hector Sinclair and William Pierce, said examination to be in accordance with the 67th rule in equity.

The depositions of Hector Sinclair and William Pierce, of the county of Preston and State of West Virginia, witnesses of lawful age, produced, sworn, and examined upon their several corporal oaths on the (7) seventh day of December, A. D. 1872, at the office of William E. Tutt, in the town of Evansville, in the county of Preston and
170 State of West Virginia, by me, William E. Tutt, a commissioner duly appointed by a dedimus potestatum or commission, issued out of the clerk's office of the circuit court of the United States for the district of West Virginia, and to me directed as such commissioner, (which commission is hereto attached and reference thereto made,) for the examination of said Hector Sinclair and William Pierce, witnesses in a certain suit and matter in controversy now pending and undetermined in said circuit court, wherein Daniel R. Brant is complainant and The Virginia Coal and Iron Company and Jane Sinclair are defendants, in behalf of the said complainant, as well on the interrogatories of the complainant and on the cross-interrogatories of the defendant, (which said interrogatories and cross-interrogatories are hereto attached, and which said interrogatories and cross-interrogatories were inclosed with and attached to said commissioner,) and upon none others; the said Hector Sinclair and William Pierce being first duly sworn by me as witnesses in said cause, previous to the examination of each of them respectively, to testify the truth, the whole truth, and nothing but the truth, as well on behalf of the complainant as of the defendants, in relation to the matters in controversy be-

tween the complainant and the defendants, so far as they should be respectively interrogated:

The said HECTOR SINCLAIR, having been sworn as aforesaid,
171 deposed and testified as follows:

Hector Sinclair's deposition.

In answer to the first interrogatory he says: My name is Hector Sinclair; occupation, a farmer; age, sixty years; residence, Preston County, West Va.

Interrogatory second. I know the plaintiff, Daniel R. Brant, for forty years, and Jane Sinclair ever since she was born; the other defendants I do not know.

Interrogatory third. I do.

Interrogatory fourth. I do know of such a sale being made; it came off at Piedmont, Virginia, I think in December, 1858. Patrick Hamill, myself, and others were present. Patrick Hammill became the purchaser at the sail'.

Interrogatory fifth. It was distinctly understood before and after the sale that the life-estate only of Nancy Sinclair was being sold, and Patrick Hammill, the purchaser, knew that such was the case, for in different conversations with him and others it was always understood that Nancy Sinclair only owned a life-interest in said land in controversy in this sale.

Interrogatory sixth. At the time of the sale Patrick Hammill led me to believe that he bid in the life-estate of Nancy Sinclair for myself and Daniel R. Brant, and then afterwards claimed it as his own and kept it.

Interrogatory seventh. I distinctly understood from Patrick
172 Hammill that he purchased it for myself and Daniel R. Brant.

Interrogatory eighth. I have been intimately acquainted with that country for the last fifty years, and I do know that for the last ten or twenty years the big or fourteen-foot vein of coal in the vicinity of the Sinclair land in question, and in the vicinity of Piedmont, Virginia, has been considered worth one thousand dollars per acre, to the best of my information.

Interrogatory ninth. I do know that the Sinclair tract of land in question contains about sixty acres of the big or fourteen-foot vein of coal, and that there is none superior to it in the vicinity of Piedmont, Virginia.

(Signed) HECTOR SINCLAIR.

Cross-interrogatory first. I lived in Preston County, Virg'a, at the time of the sail'; the name' of commissioners were Robert White, James Armstrong.

Cross-interrogatory second. I think the most of the big vein of coal in that vicinity was soaled into the hands of speculators befor' the sail in question was made, and was sold for large sums of money. I cannot give the exact figures, nor the names of parties buying or selling, and I do not know but of a few acres that has been sold since the sale in question, as there is but little of the big vain of coal in that country, and that brought big prices.

Cross-interrogatory third. I am Robert Sinclair's son. I at one time owned an interest in said tra't of land as part purchaser and heir,
173 but have sold my interest to Daniel R. Brant.

(Signed) HECTOR SINCLAIR.

Wm. Pierce's deposition.

And the said WILLIAM PIERCE, having been first duly sworn as aforesaid, deposed and testified as follows:

To the first interrogatory. The witness says my name is William Pierce; age, thirty-seven years; occupation, farming; my residence, Preston County, W. Virg'a.

Interrogatory second. I know D. R. Brant, the plaintiff, about one year, and one of the defendants, Jane Sinclair, about sixteen years; the other defendants I do not know.

Interrogatory third. I do.

Interrogatory fourth. I know of such a sale being made; it was made at Piedmont, Virginia, late in December, 1858; Patrick Hammill, Hector Sinclair, myself, and others that I do not know, were present at the sale. Patrick Hammill became the purchaser at the sail'; I saw him bid it in.

Interrogatory fifth. The life-estate of Nancy Sinclair was sold at that sale, as I understood it. Patrick Hammill, the purchaser at the sale, so reported it. I am certain of this; and the same day, after the sail' was over, I he'rd him tell others so, and I am confident it was so understood by others at the sale.

Interrogatory six. I did hear Patrick Hammill say that the in-
174 terest he purchased in said land at said sail' was the life-estate of Nancy Sinclair; he said it.

Interrogatory seventh. Patrick Hammill bid in the life-estate of Nancy Sinclair for Hector Sinclair; I heard him say so on the day of sail' in Piedmont, Virginia.

Interrogatory eight. I was not as well posted on the value of such land at the time of sail' as some others might have been, but I do know from common report that the big or fourteen-foot vein of coal in the surrounding hill in the vicinity of Piedmont, Virginia, between the years 1857 & 1860, was considered to be worth at least one thousand dollars per acre, and about the same time, or previous, I he'rd a Mr. Shaw say he had sold his big or fourteen-foot vein of coal in the vicinity of Piedmont, Virg'a, for about one thousand dollars per acre, to the best of my recollection.

Interrogatory ninth. I was familiar with the Sinclair tract of land at and before the sail' at Piedmnnt, Virg'a, and I do know that it was generally understood that said tract of land contained about sixty acres of the big or fourteen-foot vien of coal, and I further know that said tract is located within one mile and a half of the Sharpless tract of land in Virg'a, which tract contains the big or fourteen-foot vein of coal, and is known, and has been for the last ten or fifteen years worked ex-
175 tensively by the Hampshire Mining Company, by inclined plain's and railroads, and is considered of great value; and further witness sayeth not.

(Signed) WILLIAM PIERCE.

Cross-interrogatory first. I lived in Piedmont, Virg'a; the names of the commissioners, James Armstrong & Robert White.

Cross-interrogatory second. I cannot give any better answer than is found in my answers to the direct interrogatories eight and nine.

Cross-interrogatory third. I am not; I married one of his granddaughters. I never claimed any interest in the Sinclair tract of land and have no interest whatever in the present sale.

And further this deponeth sayith not.

WILLIAM PIERCE.

I, William E. Tutt, of the county of Preston, and State of West Virginia, a commissioner duly appointed to take the deposition of Hector Sinclair and William Pierce, whose names are subscribed to the foregoing depositions, do hereby certify that, previous to the commencement of the examination of the said Hector Sinclair and William Pierce, as witnesses in said suit between said Daniel R. Brant, complainant, and The Virginia Coal and Iron Company, and Jane Sinclair, defendants, the' were each respectively duly sworn by me to testify the truth, the whole truth, and nothing but the truth, in relation to the matters
176 in controversy between the said Daniel R. Brant, complainant, and The Virginia Coal and Iron Company and Jane Sinclair, defendants, so far as they should be respectively interrogated concerning the same. That said depositions were taken at my office, in the town of Evansville, in the county of Preston and State of West Virginia, on the seventh day of December, A. D. 1872, and that after said depositions were taken by me as aforesaid, the interrogatories, cross-interrogatories, and answers thereto as written down, were read over to said witnesses respectively, and that thereupon the same were respectively signed and sworn to by said deponents, Hector Sinclair and William Pierce, before me, the oath being administered by me, said commissioner, at the place and on the day and year last aforesaid.

(Signed) WILLIAM E. TUTT, [SEAL.]
Commissioner.

Fe's, six dollars, paid by plaintiff.

Exceptions endorsed on depositions by defts.' counsel.

The reading of the within depositions is excepted to so far as—

1. They give hearsay testimony of what was said by others.

2. So far as they give statements alleged to have been made by Patrick Hammill for the purpose of contradicting his testimony, as no ground had been laid for such contradiction.

3. So far as they tend to contradict the record of the court to
177 foreclose the mortgage in the circuit court of Hampshire County.

(Signed) LEE, *For Deft.*

DEFENDANTS' DEPOSITIONS.

UNITED STATES OF AMERICA, *ss:*

In the circuit court of the United States for the fourth circuit and dist. of West Virginia.

DANIEL R. BRANT, COMPLAINANT,
vs.
JANE SINCLAIR & THE VIRGINIA COAL & IRON Company, defendants. } In chancery.

The above-name' complainant will take notice that on the (25th) twenty-fifth day of July, A. D. 1872, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, the undersigned will sue out of the office of the clerk of said court a dedimus potestatum or commission, under the seal of said court, and directed to E. G. Hale, esq., of the county of Allegany, and State of Maryland, or to any judge or justice of the peace of the county and State last above mentioned, to take

the desposition of Patrick Hammill upon the interrogatories hereto attached, to be read in evidence on the part of the said defendant The Virginia Coal and Iron Company, on the hearing of the above-entitled cause, now pending in the said fourth circuit court in the district of West Virginia, on the equity side thereof, when and where you can appear and file cross-interrogatories, and join in said commis-
178 sion if you wish. Dated this 15th day of July, A. D. 1872.

(Signed) J. D. ARMSTRONG & OKEY JOHNSON,
Sols. for said Defendant, Virginia Coal & Iron Co.

Interrogatories referred to in the foregoing notice, and to be answered by Patrick Hammill, a witness to be produced and sworn and examined under by virtue of a commission to be issued pursuant to said notice before E. G. Hall, esq., or any judge or justice of the peace of the county and State last mentioned in the within notice, in the cause therein mentioned and referred to and now pending in the circuit court of the United States for the fourth circuit and district of West Virginia.

1st. What is your name, age, occupation, and place of residence?

2nd. State whether or not you are acquainted with the tract of land in Hampshire County, West Virginia, known as the Sinclair tract of land, now in the possession of the Virginia Coal & Iron Company of Hampshire County, West Virginia, and the subject of this suit, and state how long and under what circumstances you have known said land?

3. State whether or not you had any knowledge of the sale by Mrs. Sinclair of said tract to the Union Potomac Company, and if so how the price she was to receive therefor compared with the fee-simple value thereof at that time?

179 4. State whether or not at the time of said sale it was known that the big or fourteen-foot vein of bituminous coal was on said tract.

5. State all you may know about the sale of said property made in December, 1858, by Jas. D. Armstrong and Robert White, commissioners appointed by the circuit court of Hampshire County; how the price for which it sold then compared with the fee-simple value of the land of the and give your reasons for your opinion.

6. State whether you subsequently sold said land; what price you received for it, and how that price compared with what it sold for at the sale made by the commissioners aforesaid?

7. State the cause that made the difference in the price at the two sales.

8. State anything you may know of Daniel R. Brant, the complainant in this suit, having knowledge of the sale made by said commissioners; of the estate sold in said land, and of his receiving part of the proceeds of said sale, and file any written documents you may have, signed by him, showing his connection therewith.

9. State what was the age of Mrs. Nancy Sinclair at the time of the sale by said commissioners, if you know, and what an estate for her life in said land would have been worth at that time.

DISTRICT OF WEST VIRGINIA, *ss:*

On this 15th day of July, 1872, before me, a U. S. commissioner
180 for said district, personally appeared Okey Johnson, who, being duly sworn, says that he, on the 15th day of July, 1872, served a

copy of the foregoing notice and interrogatories thereto attached on James M. Jackson, esq., attorney for the complainant, Daniel R. Brant, who is, as this affiant is informed and believes, a non-resident of the State of West Va.

(Signed) OKEY JOHNSON.

Sworn to before me this 15 day of July, 1872.

(Signed) BARNA POWELL,
U. S. Commissioner.

Commissioner's fees, 50 cents.

Cross-interrogatories for Patrick Hamill.

1st. Did you not at the time of the sale under the mortgage made by J. D. Armstrong, in 1858, act as the agent of Hector Sinclair in bidding in the land at the sum at which it was sold?

2. Did not Hector Sinclair request you, previous to said sale, to bid said land in for him at such sale?

3d. Did not Hector Sinclair, after such sale, offer to pay you what money you had paid out, and request you to transfer whatever rights you had obtained, to him, in consequence of whe he claimed was a previous understanding with him to that effect?

181 4th. At the time of such sale by Armstrong, was it not known that the big vein of coal existed on said land?

5th. Was said land any more accessible at the time you disposed of whatever title you had to it than it was at the time of the sale by Armstrong, and, if so, why?

To the clerk of the circuit court of the United States for the district of West Virginia:

It appearing that ten days' notice has been given to Daniel R. Brant to file cross-interrogatories in answer to the within notice, and the said cross-interrogatories being this day filed, it is ordered that a commission be issued to E. G. Hale, esq., of Alleghany County, State of Maryland, or to any judge or justice of said county and State, to take the deposition of Patrick Hammill as a witness in the within-named cause.

(Signed) J. J. JACKSON, JR., *Judge.*

JULY 25, 1872.

Whereupon said commission was issued, in obedience to said order, dated on the 26th day of July, 1872.

Patrick Hamill's Dep'n.

The deposition of Patrick Hammill, of Alleghany County, Maryland, a witness of lawful age, produced and sworn and examined upon his corporal oath on the 31*th* day of July, 1872, in the State aforesaid, by me, a commissioner duly appointed by a dedimus poetstatum or commission issued out of the clerk's office of the circuit court of the

182 United States for the fourth circuit and district of West Virginia, with the seal of said court affixed thereto, and to me directed as such commissioner, for the examination of the said Patrick Hammill, in a certain suit and matter in controversy, now pending and undetermined in said circuit court, wherein Daniel R. Brant is

plaintiff, and Jane Sinclair and The Virginia Coal and Iron Company are defendants, in behalf of said last-named defendant, as well upon the interrogatories of the said defendant The Virginia Coal and Iron Company, as upon the cross-interrogatories of Daniel Brant, the plaintiff, in pursuance of said commission.

The said PATRICK HAMMILL, being first duly sworn by me as a witness in said cause previous to the commencement of his examination, to speak and testify the truth, the whole truth, and nothing but the truth, on behalf of the *of the* plaintiff as well as the defendants, as far as he should be interrogated, deposed and testified as set forth in the following answers to interrogatories and cross-interrogatories attached to said commission, on the day and year first above written.

Given under my hand and seal.

(Signed) EZEKIEL TOTTEN, *J. P.*, [SEAL.]
Justice Peace in and for Allegheny County, Md.

To the first interrogatory the said witness answers as follows: My name is Patrick Hammill; age, 55 years, and reside at Oakland, Maryland, Allegheny County; occupation, property-agent.

183 To the 2d interrogatory witness answers as follows: I am acquainted with the land known as the Sinklear land as the subject of this su'te. I have known said land for thirty year' or over, and at one time purchased the same of James D. Armstrong & Robert White, special commissioners.

To the 3d interrogatory witness answers as follows: I have knowledge of the sale to the Union Potomac Company by Mrs. St. Clare of said land, and that the price agreed to be paid was a faire valuation at that time for the fee-simple title of said land.

To the 4th interrogatory the said witness answers as follows: It was known at that time that the fourteen-foot or big vane was on said land.

The 5th interrogatory the witness answers as follows: The property was sold at publick auction, after being duly advertised by said commissioners, at the time mentioned in the interrogatory, and I, in connection with J. & J. Morrison, being the highest bidder, became the purchaser for the sum of two thousand & thirty dollars. I considered the price paid by us the full vallue of the fee-simple title of the land at that time. The reason for my opinion is the distance the land was from ralerode and market and the great expence it would cost to develop it.

To the 6th interrogatory the witness answers as follows: I subsequently sold my half-interest to J. & J. Morrison, on the 21st day

184 of April, 1864, for twenty-five hundred dollars. I consider the price received by me in currency a small advance on the price paid by me in coin in 1858.

To the 7th interrogatory the witness answers as follows: In the answer to the 6th interrogatory I have stated the cause of the difference of prices paid for said land was caused by the inflated condition of the currency at the time of the sale of my interest in 1864, and was also due, to some extent, to coal-lands advancing in that neighborhood.

To the 8th interrogatory the witness answers as follows: Daniel R. Brant had ful' knowledge of the sale by said commissioners, and was well aware that the commissioners was offering the fee-simple title of said land for sale, and I believe said Daniel R. Brant received his proportion of the proceeds of said sale, and allways expressed himself satisfied with said sale. I had written authority from said Brant & Hector Sinclair to have proceedings inst'uted to sell said land, but said writing

I have mislade, and am unable to find at this time, although I have made diligent search therefor.

To the 9th interrogatory the witness answers as follows: I did not know the age of Mrs. Sinclair at the time of the sale by said commissioners, but she was very old. I would not have given anything for an estate for her life in said land.

185 In answer to the 1st cross-interrogatory the said witness says: I did not.

To 2d cross-interrogatory the said witness answers: He did not.

To 3d cross-interrogatory the said witness answers: He did not, but I offered him my interest in said property at various times upon his paying me what I paid for the same.

To 4th cross-interrogatory the said witness answers: It was.

To the fifth cross-interrogatory the said witness answers: It was not.

And further the deponeth saith not.

(Signed) PATRICK HAMILL.

Magistrate's fea, 75 cts., which was paid by J. D. Armstrong, at'orney for the defendant.

I, Ezekiel Totten, of Allegheny County, in the State of Maryland, a commissioner appointed to take the deposition of Patrick Hammill, a witness, whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of said Patrick Hammill as a witness in said suit between said Daniel R. Brant and Jane Sinclair and the Virginia Coal and Iron Company, he was duly sworn by me to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between said Daniel R. Brant and Jane Sinclair and the Virginia Coal and Iron

186 Company, so far as he should be interrogated concerning the same. That the said deposition was taken at the town of Oakland, in the county of Allegheny aforesaid, on the 31st day of July, 1872, and that after said deposition was taken as aforesaid the foregoing interrogatories and answers thereto were read over to the said witness, and that thereupon the same was signed and sworn to by said deponent before me, the oath being administered by me at the place and on the day and year last aforesaid.

(Signed) EZEKIEL TOTTEN, *J. P.* [SEAL.]
Justice Peace in and Allegany County, Maryland.

UNITED STATES OF AMERICA, *ss:*

In the circuit of the United States for the fourth circuit and district of West Virginia:

DANIEL R. BRANT, COMPLAINANT,
vs.
JANE SINCLAIR AND THE VIRGINIA COAL AND IRON COMPANY, DEFENDANTS. } In chancery.

The above-name' complainant will take notice, that on the twenty-fifth day of July, 1872, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, the undersigned will sue out of the

187 office of the clerk of said court a dedimus potestatum or commission, under the seal of said court, and directed to G. F. Sims, esq., of the town of Piedmont, county of Mineral, and State of West Vir-

ginia, or to any judge or justice of the peace of the county and State last aforementioned, to take the deposition William Abernathy, upon interrogatories hereto attached, to be read in evidence on the part of the said defendant "The Virginia Coal and Iron Company," on the hearing of the above-entitled cause, now pending in the said fourth circuit in the district of West Virginia, on the equity side thereof, where you can appear and file cross-interrogatories, and join in said commissioner if you wish. Dated this 15th day of July, 1872.

(Signed) J. D. ARMSTRONG & OKEY JOHNSON,
Sols. for Deft. Virginia Coal and Iron Co.

Interrogatories referred to in the foregoing notice, and to be answer' by William Abernathy, a witness to be produced, sworn, and examined under and by virtue of a commission to be issued pursuant to said notice, before G. F. Simms, esq., or any judge or justice of the peace of the county and State last mentioned in said notice, and to read in evidence in the cause therein mentioned and referred to.

1. State your age, residence, and occupation.

2. State who were the witnesses to the will of Robert Sinclair,
188 dec'd, late of Hampshire Co., and who were present when the will was written.

3. State whether anything was said by the said Robert Sinclair, at the time the will was written, as to his intention in the disposition of his property.

4. State, if you know, who wrote the will of Robert Sinclair; and, if so, did you know the man, and how long had you known him?

5. What was the business of John Junkins, and state whether he was a well-informed man or otherwise, and whether he was in the habit of preparing wills and other instruments of writing for his neighbors.

6. State whether you know the complainant, Daniel R. Brant, and, if so, whether he has had possession of the Sinclair farm, now occupied by the defendant Virginia Coal and Iron Company, since the death of Mrs. Nancy Sinclair, the widow of Robert Sinclair, deceased.

DISTRICT OF WEST VIRGINIA, *ss:*

On this 15 day of July, 1872, before me, a U. S. commissioner for said district, personally appeared Okey Johnson, who, being duly sworn, says that he served a copy of the foregoing notice and interrogatories thereto attached on James M. Jackson on the 15 day of July, 1872, the said James M. Jackson being attorney for the complainant, Daniel R. Brant, wh', as this affiant is informed and believes, is a non-resident of the State of West Va.

(Signed) OKEY JOHNSON.

189 Sworn to and subscribed before me this 15th day of July, 1872.

(Signed) BARNA POWELL,
U. S. Commissioner.

Commissioner's fees, 50.

Cross-interrogatories for Wm. Abe'nathy.

1st. How long have you known the premises in controversy; that is, the Sinclair farm? Who has been in possession thereof since you have known the same?

2d. Were you ever in possession of said premises; if so, when did you go into possession thereof, and under whom as landlord did you go into

possession thereof? If you were in possession of said premises as the tenant of any one, state whose tenant you was; who you rented of; who was your landlord; who you paid rent to; how many times you paid rent; what rent did you pay; when did you go into possession of said premises, and how long did you remain in possession of the same? Answer fully and at large.

3d. Do you know Jane Sinclair; if so, how long did you know her; where did you know her; where does she now live; what is her state of mind and mental capacity; is she an insane person, or idiot, or of sound mind?

4th. If in answer to the last interrogatory you say Jane Sinclair is an idiot or insane person, state how long she has been so.

5th. State, if you know, whether John Junkins had any legal education.

190 6th. State, if you know, whether John Junkins could teach arithmetic further than what was known as the single rule of three, in Pike's arithmetic.

7th. State, if you know, what was John Junkins' occupation. Was or was he not a farmer, who sometimes taught a country school?

To the clerk of the circuit court of the United States for the district of West Virginia.

It appearing that ten days' notice has been given to Daniel R. Brant to file cross-interrogatories in answer to the within notice, and said cross-interrogatories being this day filed, it is ordered that a commission be issued to G. F. Sims, esq., of Piedmont, in the county of Mineral and State of West Virginia, or to any judge or justice of the peace of said county and State, to examine the within-named William Abernathy as a witness in the within-named cause.

(Signed) J. J. JACKSON, JR.,
Judge, &c.

JULY 25, 1872.

Whereupon a commission was issued in obedience to said order, dated 26th July, 1872.

The deposition of William Abernathy, of Mineral County, and State of West Virginia, a witness of lawful age, produced and sworn and examined on his corporal oath, on the 2nd day of August, 1872, at the town of Piedmont, in the county of Mineral, in the State

191 aforesaid, by me, a commissioner duly appointed by a dedimus potestatum or commission, issued out of the clerk's office of the circuit court of the United States for the fourth circuit and district of West Virginia, with the seal of said court affixed thereto, and to me directed as such commissioner, for the examination of the said William Abernathy in a certain suit and matter in controversy now pending and undetermined in said circuit court, wherein Daniel R. Brant is plaintiff, and Jane Sinclair and The Virginia Coal and Iron Company are defendants, in behalf of said last-named defendant, as well upon the interrogatories of the said defendant The Virginia Coal and Iron Company as upon the cross-interrogatories of Daniel R. Brant, the plaintiff, in pursuance of said commission. The said William Abernathy, being first duly sworn by me as a witness in said cause, previous to the commencement of his examination, to speak and testify the truth, the whole truth, and nothing but the truth, on behalf of the plaintiff as well as the defendants, as far as he should be interrogated, deposed and testi-

fied as set forth in the following answers to the interrogatories attached to said commission, on the day and year first above written.

Given under my hand and seal.

G. F. SIMS, [SEAL.]
Justice.

William Abernathy's deposition.

192 To the first interrogatory the said witness answers as follows: My age is 67 years. I reside in Mineral County, West Virginia, and I am a farmer.

To the second interrogatory the witness answers as follows: John Junkins, Thos. Abernathy, decd., and myself were the witnesses to the will of Robert Sinclair, deceased. I was not present when the will was written, but was present when it was signed and acknowledged by the said Robert Sinclair as his last will and testament, as also was the said Thomas Abernathy and John Junkins.

To the third interrogatory the witness answers as follows: I have no recollection of the said Robert Sinclair saying anything as to his intentions in the disposition of his property, and I do not think he said anything in relation thereto at the time of signing & acknowledging the will.

To the fourth interrogatory the witness answers as follows: John Junkins wrote the will of Robert Sinclair. I was well acquainted with him; had known him all my life, up to the time of his death. I must have known him forty years at least.

To the fifth interrogatory the witness answers as follows: John Junkins' occupation was school-teaching. He also farme' occasionally. I always considered him a sensible and well-informed man. It was customary for his neighbors to employ him to prepare wills and
193 other instruments of writing for them.

To the sixth interrogatory the witness answers as follows: I I am acquainted with Daniel R. Brant; and since the death of Mrs. Nancy Sinclair I have never known him, the said Daniel R. Brant, to be in possession of the Sinclair farm.

To the first cross-interrogatory the witness answers as follows: I have known the Sinclair farm all my life. When I first knew it Robert Sinclair was in possession of it, & after his death, his wife, who sold the same, I think, to Duff Green, and subsequent to the sale of the said Sinclair land to Duff Green, Hector Sinclair and the said Daniel R. Brant claimed to have possession of the same, and afterwards it was sold by a decree of court and purchased by Patrick Hamill and John & James Morrison, and sold by them to John F. Ehlen, I think, who purchased the same for the Virginia Coal and Iron Company, as they have been in possession ever since.

To the second cross-interrogatory the witness answers as follows: I was and am still in possession of the Sinclair farm a' a renter. I first rented the farm of Hector Sinclair and Daniel R. Brant, I think, about fifteen years ago, to whom I paid rent *to* for several years, at the rate of seventy-five dollars per annum, and I subsequently rented of
194 Patrick Hamill & the two Morrisons, to whom I paid rent, and at present I am a renter of the Virginia Coal & Iron Company.

To the third cross-interrogatory the witness answers as follows: I 'new Jane Sinclair for a number of years, at least thirty years. She now resides in the western part of this State. I always considered her a very weak-minded person.

To the fourth cross-interrogatory the witness answers as follows: I have known Jane Sinclair all her life up to the time she left this section of country, and I always considered her of a weak or unsound mind during the whole time I have known her.

To the fifth cross-interrogatory the witness answers as follows: I do not know whether John Junkins had any legal education or not.

To the sixth cross-interrogatory the witness answers as follows: I do not know whether John Junkins could teach further than the single rule of three in Pike's arithmetic, but I always considered him a good arithmeti*tion.*

To the seventh interrogatory the witness answers as follows: John Junkins was a school-teacher by occupation, but farmed occasionally.

And further the depone*th* sayeth not.

(Signed) WILLIAM ABERNATHY.

Costs of deposition, justice's costs, 2 hours, 75	$1 50
1 witness, attendance	1 00
	$2 50

195 Rec'd the above costs, as stated, of defendant's counsel.

(Signed) G. F. SIMS, *Justice.*

I, G. F. Sims, of the town of Piedmont, in the county of Mineral, and State of West Virginia, a commissioner duly appointed to take the deposition of William Abernathy, whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of said William Abernathy as a witness in said suit between said Daniel R. Brant and Jane Sinclair and The Virginia Coal and Iron Company, he was duly sworn by me to testify the truth, the whole truth, and nothing but the truth, in relation to the matter in a controversy between said Daniel R. Brant and Jane Sinclair and The Virginia Coal and Iron Company, so far as he should be interrogated concerning the same; that the said deposition was taken at the town of Piedmont, in the county of Mineral aforesaid, on the 2nd day of August, 1872, and that after said deposition was taken as aforesaid the foregoing interrogatories and answers thereto were read over to said witness, and that thereupon the same was signed and sworn to by said deponent, before me, the oath being administered by me at the place and on the day and year last aforesaid.

(Signed) G. F. SIMS, [SEAL.]

Justice of Piedmont Township, in Mineral County, W. Va.

196 STATE OF WEST VIRGINIA,
Wood County, ss:

In the circuit court of the United States for the district of West Virginia.

DANIEL R. BRANT, COMPLAINANT,
vs.
THE VIRGINIA COAL AND IRON COMPANY AND Jane Sinclair, defendants. } In chancery.

Notice.

TO DANIEL R. BRANT:

Take notice that on the 4th day of January, 1873, at 10 o'clock a. m. of said day, or as soon thereafter as counsel can be heard, the under-

signed will sue out of the office of the clerk of the said circuit court of the United States aforesaid, a dedimus potestatum, or commission, under the seal of said court, directed to C. S. White, esq., of the town of Romney, in the county of Hampshire and State of West Virginia, or to any judge or justice of the peace of the said county and State last mentioned, to take the deposition of Robert White upon the interrogatories hereto attached to be read in evidence on the part of the defendant The Virginia Coal and Iron Company, on the hearing of the above-entitled cause now pending in the said circuit court on the chancery side thereof, when and where you can appear and file cross-interrogatories and
197 join in said commission, if you so wish. Dated this 24th day of December, 1872.

(Signed) THE VIRGINIA COAL & IRON COMPANY,
By ARMSTRONG, LEE & JOHNSON,
Counsel for said Company.

Interrogatories referred to in the foregoing notice and to be answered by Robert White, a witness to be produced, sworn, and examined under and by virtue of the annexed commission, C. S. White, or any judge or justice of the peace of the county and State last mentioned in the within notice, in the cause therein mentioned and referred to, and now pending in the circuit court of the United States for the district of West Virginia, wherein Daniel R. Brant is complainant and The Virginia Coal and Iron Company and Jane Sinclair are defendants, on the part and behalf of the said defendant The Virginia Coal and Iron Company, as follows, to wit:

Int. 1st. State your age, residence, and occupation.

Int. 2d. State, if you know, the parties to this suit, or either of them; and, if so, how long.

Int. 3d. State whether or not you were one of the commissioners who sold in December, 1859, under the order of the circuit court of Hampshire County, a tract of land on Allegheny Mountain, in what is now Mineral County, known as the Sinclair tract of land; and, if so,
198 state all the circumstances connected with said sale, and your opinion as to the fairness of the sale and the sufficiency of the price for which it sold.

Int. 4th. State whether you were counsel in said cause in which said sale was made; and, if so, for whom, and whether or not you know of Daniel R. Brant, the complainant, & Hector Sinclair receiving any of the money for which said land was sold; and, if so, how much, and to whom paid, and by whom.

Int. 5th. State any other matter you may know that would be pertinent in this case.

STATE OF WEST VIRGINIA,
Wood County, ss:

Okey Johnson, being first duly sworn, deposes and says that on the 24th day of December, 1872, he served the foregoing notice and interrogatories thereto attached upon W. H. Small, attorney for the complainant, Daniel R. Brant, by leaving a true copy thereof with said Small; and further saith not.

(Signed) OKEY JOHNSON.

Sworn to before me this 24th day of December, 1872.
(Signed) BARNA POWELL,
U. S. Com. Dist. of W. Va.

(Endorsed:) The clerk will issue the commission.
(Signed) J. J. JACKSON, JR.

Whereupon said commission was issued, dated on the 4th day of January, 1874.

199 Cross-interrogatories to be propounded to Robert White, esqr.

Cross-interrogs.:

1st cross-int. Did you not, in your office, in Romney, Virginia, about the fall of A. D. 1866, and after the death of Nancy Sinclair, advise the plaintiff, D. R. Brant, that his title to the Sinclair farm was good at that time?

2d cross-int. Did you not at the same time advise said Brant that at the sale made by the commissioners in Piedmont, in December, A. D. 1858, nothing was or could be sold except the life-estate of Nancy Sinclair, that being all that was conveyed to her by the will of Robert Sinclair, deceased?

The deposition of Robert White, of the county of Hampshire and State of West Virginia, a witness of lawful age, produced, sworn, and examined upon his corporal oath, on the ninth day of January, 1873, at the office of C. S. White, of the said county of Hampshire and State aforesaid, in the town of Romney, in the said county and State last mentioned, by me, C. S. White, a commissioner duly appointed by a dedimus potestatum, or commission, issued out of the clerk's office of the circuit court of the United States for the district of West Virginia, and to me directed, as such commissioner, (which com-
200 mission is hereto attached and reference thereto made,) for the examination of Robert White, a witness in a certain suit and matter in controversy now pending and undetermined in said circuit court, wherein Daniel R. Brant is complainant, and The Virginia Coal and Iron Company and Jane Sinclair are defendants, in behalf of the said defendant The Virginia Coal and Iron Company, as well upon the interrogatories of the said defendant as the cross-interrogatories of the said complainant, which interrogatories and cross-interrogatories are hereto attached and which were inclosed with and attached to said commission, and upon none others, the said Robert White, being first duly sworn by me as witness in said cause, previous to his examination, to testify the truth, the whole truth, and nothing but the truth, as well on behalf of the complainant as the defendant in relation to the matters in controversy between the complainant and defendants, as far as he should be interrogated.

The said Robert White, sworn as aforesaid, deposed and testified as follows:

Robt. White's deposition.

In answer to the first interrogatory he says: I will be forty years old next month if I live. I reside in Romney, West Va., & am a lawyer by profession.

201 In answer to the second interrogatory he says: I am personally acquainted with Daniel R. Brant. I believe I know some of

signed will sue out of the office of the clerk of the said circuit court of the United States aforesaid, a dedimus potestatum, or commission, under the seal of said court, directed to C. S. White, esq., of the town of Romney, in the county of Hampshire and State of West Virginia, or to any judge or justice of the peace of the said county and State last mentioned, to take the deposition of Robert White upon the interrogatories hereto attached to be read in evidence on the part of the defendant The Virginia Coal and Iron Company, on the hearing of the above-entitled cause now pending in the said circuit court on the chancery side thereof, when and where you can appear and file cross-interrogatories and
197 join in said commission, if you so wish. Dated this 24th day of December, 1872.

(Signed) THE VIRGINIA COAL & IRON COMPANY,
By ARMSTRONG, LEE & JOHNSON,
Counsel for said Company.

Interrogatories referred to in the foregoing notice and to be answered by Robert White, a witness to be produced, sworn, and examined under and by virtue of the annexed commission, C. S. White, or any judge or justice of the peace of the county and State last mentioned in the within notice, in the cause therein mentioned and referred to, and now pending in the circuit court of the United States for the district of West Virginia, wherein Daniel R. Brant is complainant and The Virginia Coal and Iron Company and Jane Sinclair are defendants, on the part and behalf of the said defendant The Virginia Coal and Iron Company, as follows, to wit:

Int. 1st. State your age, residence, and occupation.

Int. 2d. State, if you know, the parties to this suit, or either of them; and, if so, how long.

Int. 3d. State whether or not you were one of the commissioners who sold in December, 1859, under the order of the circuit court of Hampshire County, a tract of land on Allegheny Mountain, in what is now Mineral County, known as the Sinclair tract of land; and, if so,
198 state all the circumstances connected with said sale, and your opinion as to the fairness of the sale and the sufficiency of the price for which it sold.

Int. 4th. State whether you were counsel in said cause in which said sale was made; and, if so, for whom, and whether or not you know of Daniel R. Brant, the complainant, & Hector Sinclair receiving any of the money for which said land was sold; and, if so, how much, and to whom paid, and by whom.

Int. 5th. State any other matter you may know that would be pertinent in this case.

STATE OF WEST VIRGINIA,
Wood County, ss:

Okey Johnson, being first duly sworn, deposes and says that on the 24th day of December, 1872, he served the foregoing notice and interrogatories thereto attached upon W. H. Small, attorney for the complainant, Daniel R. Brant, by leaving a true copy thereof with said Small; and further saith not.

(Signed) OKEY JOHNSON.

Sworn to before me this 24th day of December, 1872.
(Signed) BARNA POWELL,
U. S. Com. Dist. of W. Va.

(Endorsed:) The clerk will issue the commission.
(Signed) J. J. JACKSON, JR.

Whereupon said commission was issued, dated on the 4th day of January, 1874.

199 Cross-interrogatories to be propounded to Robert White, esqr.

Cross-interrogs.:

1st cross-int. Did you not, in your office, in Romney, Virginia, about the fall of A. D. 1866, and after the death of Nancy Sinclair, advise the plaintiff, D. R. Brant, that his title to the Sinclair farm was good at that time?

2d cross-int. Did you not at the same time advise said Brant that at the sale made by the commissioners in Piedmont, in December, A. D. 1858, nothing was or could be sold except the life-estate of Nancy Sinclair, that being all that was conveyed to her by the will of Robert Sinclair, deceased?

The deposition of Robert White, of the county of Hampshire and State of West Virginia, a witness of lawful age, produced, sworn, and examined upon his corporal oath, on the ninth day of January, 1873, at the office of C. S. White, of the said county of Hampshire and State aforesaid, in the town of Romney, in the said county and State last mentioned, by me, C. S. White, a commissioner duly appointed by a dedimus potestatum, or commission, issued out of the clerk's office of the circuit court of the United States for the district of West Virginia, and to me directed, as such commissioner, (which com-
200 mission is hereto attached and reference thereto made,) for the examination of Robert White, a witness in a certain suit and matter in controversy now pending and undetermined in said circuit court, wherein Daniel R. Brant is complainant, and The Virginia Coal and Iron Company and Jane Sinclair are defendants, in behalf of the said defendant The Virginia Coal and Iron Company, as well upon the interrogatories of the said defendant as the cross-interrogatories of the said complainant, which interrogatories and cross-interrogatories are hereto attached and which were inclosed with and attached to said commission, and upon none others, the said Robert White, being first duly sworn by me as witness in said cause, previous to his examination, to testify the truth, the whole truth, and nothing but the truth, as well on behalf of the complainant as the defendant in relation to the matters in controversy between the complainant and defendants, as far as he should be interrogated.

The said Robert White, sworn as aforesaid, deposed and testified as follows:

Robt. White's deposition.

In answer to the first interrogatory he says: I will be forty years old next month if I live. I reside in Romney, West Va., & am a lawyer by profession.

201 In answer to the second interrogatory he says: I am personally acquainted with Daniel R. Brant. I believe I know some of

the parties interested in the Virginia Coal & Iron Company of Hampshire County, West Virginia, and I do not know the other party.

In answer to the third interrogatory he says: I was one of the commissioners appointed by the circuit court of Hampshire County in a chancery cause then therein pending, wherein Hector Sinclair & Daniel R. Brant were complainants, and The Union Potomac Company & Nancy Sinclair were defendants, to make sale of a tract of 110 acres, more or less, of land lying in what is now Mineral County, West Virginia, and known as the Sinclair farm, the same which I understand this suit is about. Mr. James D. Armstrong was the other commissioner. The sale took place on the 30th day of December, 1858, pursuant to an advertisement, a copy of which I here file marked "R. W. No. 1."

(The advertisement referred is heretofore copied and made part of this record.)

At the said sale Patrick Hammill became the purchaser of said land, at the price of two thousand & thirty dollars, upon the terms named in said advertisement. He paid the cash payment and the first deferred payment, and gave his bonds with security for the second and third deferred payments, which bonds have been paid; one
202 before the war, and the last, as well as I can fix it, somewhere about the year 1866. The said sale was confirmed by the said circuit court, (as the record in said cause shows,) on the 13th day of April, 1859. My opinion at the time of said sale was that it was a fair sale. I have no *no* recollection of ever thinking the price insufficient; and from the information I had then, I believed it to be sufficient; I mean sufficient for the land as sold under said advertisement. I feel satisfied that no announcement was made or understanding had with either of said commissioners as to the title to said land sold, further than is set forth in said advertisement; and that the said price was then considered a fair one for said land in fee, situated as the land there was, by the commissioners.

The advertisement under which said sale was made was published in the Piedmont Independent, a newspaper published at Piedmont, in (now) Mineral County, West Virginia, and in the Cumberland Civilian, a newspaper published in Cumberland, Allegany County, Maryland, both of which towns (Piedmont & Cumberland) are in what is known as the "coal region."

The suit in which said sale was made was ins'tuted for the foreclosure of a mortgage from the Union Potomac Company to Nancy Sinclair, dated 20th day of July, 1839.

203 In answer to the fourth interrogatory he says: I was one of the counsel for the complainants in said cause. It appears from a statement filed in the papers of said cause that Zimri Bane, under an agreement he had with Hector Sinclair, received of the amount of the fund in said cause four hundred & nineteen dollars & thirty-six cents, and that Patrick Hammill (who the commissioners were satisfied was authorized by said Hector Sinclair to receive the same) received at one time two hundred dollars, at another time (by credit on his bond) three hundred & fifty-three dollars & thirty-eight cents, and at another time fifty-seven dollars fifty-eight & a half cents was settled with said Patrick Hammill. Said statement also shows that said Daniel R. Brant, out of said fund, received on the 23d day of August, 1860, five hundred & fifty-eight dollars & eighty-six cents; on the second day of July, 1866, ther' was paid P. Hammill on the order of D. R. Brant twenty-six dollars & twenty-five cents, and that I hold Daniel R. Brant's receipt, dated 24th October, 1867, for five hundred & twelve dollars & sixty

cents, amount in full of his claim in said cause; and by the said statement, receipts, and papers in said cause it appears that the whole fund in said suit, after payment of costs of suit & fees, has been paid over to said Daniel R. Brant & Hector Sinclair, or those authorized by them to receive it.

204 In answer to the fifth interrogatory he says: I can remember now nothing else pertinent in this case.

In answer to the first cross-interrogatory he says: I do not think I ever advised Mr. Brant so; but my partner, Mr. Jacob, as I recollect, expressed the opinion to Mr. Brant that Nancy Sinclair only took a life-estate in the land under the will of her husband. My recollection is that Mr. Jacob & myself differed in opinion on the subject. Mr. Brant had consulted us in relation to bringing a suit for said land upon a contingent fee. No arrangement was ever made about a fee, and no suit was brought by us. Whether it was because the fee offered was entirely contingent, or why it was we did not bring the suit, I cannot now remember.

In answer to the 2nd cross-interrogatory he says: I have no recollection of ever giving such advice. Mr. Jacob, at the time spoken of in the last answer, may have done so. As before said, my recollection is that Mr. Jacob and I differed upon the subject of the construction of said will. And further deponent saith not.

(Signed) ROBT. WHITE.

I, C. S. White, of the county of Hampshire and State of West Virginia, a commissioner duly appointed to take the deposition of Robert White, whose name is subscribed to the foregoing deposition, do certify that previous to the commencement of the examination of the said

205 Robert White, a witness in said suit between Daniel R. Brant, complainant, and The Virginia Coal and Iron Company and Jane Sinclair, defendants, he was duly sworn by me to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy between the said Daniel R. Brant, complainant, and the Virginia Coal and Iron Company and Jane Sinclair, defendants, so far as he should be interrogated concerning the same; that said deposition was taken at my office, in the town of Romney, in the county of Hampshire and State of West Virginia, on the 9th day of January, 1873; and that after said deposition was taken by me as aforesaid, the interrogatories, cross-interrogatories, and answers thereto, as written down, were read over to said Robert White, and thereupon the same were signed and sworn to by him before me, the oath being administered by me, said commissioner, at the place and on the day and year last aforesaid; and that I have no interest, either directly or indirectly, in the suit aforesaid in which this deposition is taken, and am not counsel for either of the parties to said suit.

(Signed) C. S. WHITE, [SEAL.]
Commissioner.

NOTARY PUBLIC, ROMNEY, W. VA. Costs of this deposition: Commissioner, 6 hours, $4.50c.; wits. att. & cert., 30; witness attendance, 1.00. Charged to defendants.

C. S. WHITE,
Commissioner.

206 STATE OF WEST VIRGINIA,
Wood County, ss:

In the circuit court of the United States for the district of West Virginia.

DANIEL R. BRANT, COMPLAINANT,
vs.
THE VIRGINIA COAL AND IRON COMPANY AND Jane Sinclair, defendants. } In chancery.

To DANIEL R. BRANT:

Take notice that on the 4th day of January, 1873, at 10 o'clock a. m. of said day, or as soon thereafter *or* counsel be heard, the undersigned will sue out of the office of the clerk of the said circuit court of the United States aforesaid a dedimus potestatum, or commission, under the seal of said court, directed to Gilmore F. Sims, esq., of the town of Piedmont, in the county of Mineral and State of West Virginia, or to any judge or justice of the peace of said county and State last mentioned, to take the depositions of Alexander Kalbaugh, Geo. G. Tasker, and William Abernathy, upon the interrogatories hereto attached, to be read in evidence on the part of the defendant The Virginia Coal and Iron Company on the hearing of the above-entitled cause now depending in the said circuit court, on the chancery side thereof, when and where you can appear and file cross-interrogatories and join in said commission if you so wish.

Dated this 24th day of December, 1872.

(Signed) THE VIRGINIA COAL AND IRON COMPANY,
207 By ARMSTRONG, LEE & JOHNSON,
Counsel for said Company.

Interrogatories referred to in the foregoing notice, and to be answered by Alexander Kalbaugh, George G. Tasker, and William Abernathy, witnesses to be produced, sworn, and examined, under and by virtue of the annexed commission, before Gilmore F. Sims, esq., or any judge or justice of the peace of the county and State last mentioned in the within notice, in the cause therein mentioned and referred to, and now pending in the circuit court of the United States for the district of West Virginia, wherein Daniel R. Brant is complainant, and The Virginia Coal and Iron Company and Jane Sinclair are defendants, on the part and behalf of the said defendant The Virginia Coal and Iron Company, as follows, to wit:

Interrogatory first. What is your name, age, residence, and occupation?

Int. second. Do you know the parties to this suit, or either of them; if so, who, and how long have you known them?

Int. 3rd. State whether or not you are acquainted with the tract of land on Allegheny Mountains, in the county of Mineral, about three miles south of the Baltimore & Ohio R. R., known as the Sinclair tract, and now in the possession of The Virginia Coal and Iron Company, of Hampsh*ier* County, one of the defendants in this action; if so,
208 state how long you have known said tract, and how near it you reside.

Int. 4th. State whether or not you know of the sale of said tract of land, made in December, 1859, by Robert White and J. D. Armstrong,

commissioners appointed by the circuit court of Hampshire County; and if so, state ho' the price for which it sold, $2,030, compared with the fee-simple value thereof at that time, subject to the life-estate for agricultural purposes of Nancy Sinclair, widow of Robert Sinclair.

Int. 5th. State whether or not, at the time of the sale of said tract in 1839 by Mrs. Nancy Sinclair to the Union Potomac Company, of which Duff Green was president, the price which said company contracted to pay, viz, $1,100, was a fair price for the fee-simple of said land, subject to the life-estate for agricultural purposes of Mrs. Nancy Sinclair.

Int. 6th. State when and by whom the first coal-mine was opened and worked on said tract, and whether or not any mine was worked thereon in 1839 or in 1859, or between those dates.

Int. 7th. State your opportunities of knowing the value of coal-lands in that neighborhood at the periods mentioned.

Int. 8th. State any other matter or thing that you deem pertinent in this case.

STATE OF WEST VIRGINIA,
Wood County, ss:

Okey Johnson, being first duly sworn, deposes and says that on the 24th day of December, A. D. 1872, he served the foregoing notice
209 and interrogatories thereto attached upon W. H. Small, attorney for the complainant, Daniel R. Brant, by leaving a true copy thereof with the said W. H. Small; and further says not.

(Signed) OKEY JOHNSON.

Sworn to before me this 24th day of December, 1872.

(Signed) BARNA POWELL,
U. S. Commr. Dist. of West Va.

Cross-interrogatories to be propounded to George G. Tasker.

1st cross-interrogatory. Did you not have a difficulty with the plaintiff, Brant, about the year A. D. 1841, in which said Brant claimed that you defrauded him out of about forty dollars?

2d cross-interrogatory. Has the plaintiff, Brant, spoken to you since such difficulty, if you say there was a difficulty?

3d cross-interrogatory. Have not you and the plaintiff, Brant, been on unfriendly terms for the last thirty years?

(Endorsed:) The clerk will issue the commission.

(Signed) J. J. JACKSON, JR.

Whereupon said commission was issued in due form, dated 4th day of January, 1873.

The deposition of Alexander Kalbaugh, George G. Tasker, and William Abernathy, of the county of Mineral and State of West Virginia, witnesses of lawful age, produced, sworn, and examined
210 upon their several corporal oaths, on the 8th day of January, 1873, at their respective residences in the county and State aforesaid, in the county of Mineral, in the State aforesaid, by me, Joseph B. Gibson, a commissioner duly appointed by a dedimus potestatum, or commission, issued out of the clerk's office of the circuit court of the United States for the district of West Virginia, and to me directed as such commissioner, (which commission is hereto attached and reference thereto made,) for the examination of said Al-

exander Kalbaugh, George G. Tasker, and William Abernathy, witnesses in a certain suit and matter in controversy now pending and undetermined in said circuit court, wherein Daniel R. Brant is complainant, and The Virginia Coal and Iron Company and Jane Sinclair are defendants, in behalf of the said defendant The Virginia Coal and Iron Company, as well upon the interrogatories of the said defendant as the cross-interrogatories of the said complainant, which interrogatories and cross-interrogatories are hereto attached, and which were enclosed with and attached to said commission, and upon none others, the said Alexander Kalbaugh, George G. Tasker, and William Abernathy being first duly sworn by me as witnesses in said cause, previous to the examination of each of them respectively, to testify the truth, the whole truth, and nothing but the truth, as well on behalf of the complainant as of the defendants, in relation
211 to the matters in controversy between the complainants and defendants as far as they should be respectively interrogated.

The said ALEXANDER KALBAUGH, having been duly sworn as aforesaid, deposed and testified as follows:

Alexander Kalbaugh's deposition.

In answer to the first interrogatory he says: My name is Alexander Kalbaugh; my age, 44 years; occupation, farmer, and I reside in Mineral Co., W. Va., about five miles from Piedmont, on land a'joining the Sinclair tract; the latter belonging to the Va. Coal & Iron Co.

In answer to the 2d interrogatory he says: I know the plaintiff, Daniel R. Brant; have known him for about twenty years; and I have known Jane Sinclair, one of the defendants, about 22 years, but I do not know the other defendants who constituted the Va. Coal & Iron Co.

In answer to the 3d interrogatory he says: I have been acquainted with the Sinclair tract of land, now in the possession of the Va. Coal and Iron Co., for about 20 years, having resided near it for about that time.

In answer to the 4th interrogatory he says: I understood the land was sold about the year 1859, by Robt. White & James D. Armstrong, commissioners appointed by the circuit court of Hampshire Co., for the sum of $2,030 *dollars*, which I think was the full value in fee-simple of said tract at that time, subject to the life-estate for agricultural purposes of Nancy Sinclair, widow of Robt. Sinclair.

212 In answer to the 5th interrogatory he says: I consider the price contracted by the Union Potomac Co., of which Duff Green was president, to pay Mrs. Sinclair, namely, one thousand dollars, a fair price for the fee-simple of said land, subject to the life-estate of Mrs. Sinclair for agricultural purposes.

In answer to the 6th interrogatory he says: The first mine that was ever opened on said tract was opened and worked by the Va. Coal and Iron Co., which was in 1869, previous to which time there never had been any mine opened and worked, either in the year 1839 or 1859, or any other time.

In answer to the 7th interrogatory he says: I resided in the neighborhood of the Sinclair tract for a greater part of the time between the periods mentioned, and have known of sales of different tracts of land in the Sinclair neighborhood, and have formed my opinion by comparing those sales with that of the Sinclair tract.

In answer to the 8th interrogatory he says: I know of nothing further pertinent to this case.

Furthermore deponant sayeth not.

(Signed) ALEXANDER KALBAUGH.

The said GEORGE G. TASKER, being duly sworn as aforesaid, deposed and testified as follows:

Geo. G. Tasker's deposition.

In answer to the first interrogatory he say': My name is George G. Tasker. I was 78 years old last June.

In answer to the 2d interrogatory he says: I have known the plaintiff, Daniel R. Brant, from childhood; also knew the defendant Jane
213 Sinclair from her childhood, but am not acquainted with the parties who constitute the Va. Coal & Iron Co.

In answer to the 3d interrogatory he says: I am well acquainted with the Sinclair tract of land now in possession of the Va. Coal & Iron Co., and have been acquainted with it for fifty or sixty years, having resided on land a'joining it for that length of time.

In answer to the 4th interrogatory he says: I heard of it being advertised and afterwards sold by White & Armstrong, commissioners of the circuit court of Hampshire County, in about the year 1859, and I considered the price for which said tract of land sold at that time, namely, $2,030, the full value of the fee-simple therein, subject to the life-estate for agricultural purposes of Nancy Sinclair.

In answer to the 5th interrogatory he says: At the time of the sale of the Sinclair tract in 1839 by Mrs. Nancy Sinclair to the Union Potomac Co., of which Duff Green was president, I considered the price which said co. contracted to pay, namely, $1,000 *dollars*, was a full and fair price for the fee-simple of said land at that time, subject to the life-estate of Nancy Sinclair for agricultural purposes.

In answer to the 6th interrogatory he says: The first mine opened and worked on the said Sinclair tract of land was opened & worked by the Va. Coal & Iron Company in 1869, before which time ther' never had been any mine opened and worked, either in the
214 year 1839 or 1859, or any other time, as far as I know.

In answer to the 7th interrogatory he says: I have lived on a'joining land of the Sinclair tract ever since the year 1810, and formed my judgment of the value of the Sinclair tract at the times in which it was sold, namely, in the years 1839 & 1859, by the rates at which lands were held and sold in the same neighborhood of the Sinclair tract of land at the times mentioned.

In answer to the 8th interrogatory he says: I know of nothing further pertinent to the case.

Cross-examined:

In answer to the first cross-interrogatory he says: I had a difficulty with him about the year 1841. He may have claimed that I defrauded him out of $40 *dollars*, but I know nothing of said claim.

To 2d cross-interrogatory he says: I don't believe he has spoken to me since said difficulty.

In answer to 3d interrogatory he says: We have not spoken for about 30 years, but I have no ill feeling against Mr. Brant.

And furthermore depo'ent sayeth not.

(Signed) GEORGE G. TASKER.

The said WM. ABERNATHY, being duly sworn as aforesaid, deposed and testified as follows:

Wm. Abernathy's deposition.

In answer to the first interrogatory he says: My name is Wm. Aber-

nathy. I was sixty-eight years of age last July. I reside in Mineral County, West Va., about five miles from Piedmont; by occupation, farmer.

215 In answer to second interrogatory he says: I have known the plaintiff, Daniel R. Brant, for thirty-five or forty years. I also knew Jane Sinclair when she resided in this county, but am not acquainted with the parties who constituted the Virginia Coal and Iron Company. I knew the said Jane Sinclair about forty years.

In answer to the third interrogatory he says: I am well acquainted with the Sinclair tract of land now in possession of the Virginia Coal and Iron Company. I have known said tract from childhood, having resided on land adjoining it all my life.

In answer to the fourth interrogatory he says: I recollect of hearing of the sale of said tract of land by said White and Armstrong as commissioners of the circuit court of Hampshire County, but was not present at the sale, which took place at Piedmont just a short time before the war. I consider the price paid by the purchasers, namely, two thousand & thirty dollars, the full value for the fee-simple interest of said tract of land at that time, subject to the life-estate for agricultural purposes of Nancy Sinclair, widow of Robert Sinclair. It was generally considered a good sale throughout the neighborhood.

In answer to the fifth interrogatory he says: I consider the sale made by Mrs. Nancy Sinclair in 1839 to the Union Potomac Company,

216 of which Duff Green was president, a good one; price contracted to be paid, namely, 1,000.00 dollars, was a full and fair price for the fee-simple of said land, subject to the life-estate for agricultural purposes of Mrs. Nancy Sinclair.

In answer to the sixth interrogatory the answer is as follows: The first coal-mine was opened and worked on said tract in the year 1869, by the Va. Coal & Iron Company, previous to which time there had been no mine opened or worked either in the year 1839 or 1859, or between those dates, or at any other time, until opened and worked by the Va. Coal & Iron Co. as aforesaid.

In answer to the seventh interrogatory he says: My oppertunities of knowing the value of coal-land in the neighborhood of the Sinclair tract at the periods mentioned, 1839 & 1859, are by reason of my residing in said neighborhood, and by knowledge of sales made by various parties of lands in the neighborhood on and about the periods aforesaid.

In answer to the eighth interrogatory he says: I know of no other matter or thing that is pertinant to this case.

And furthermore the deponent sayeth not.

(Signed) WILLIAM ABERNATHY.

Cost of depositions: Justice's fees, 12 hours, 75 cts. per hour, $9.00; paid by defendant's counsel.

I, Joseph B. Gibson, of the county of Mineral and State of West

217 Virginia, a commissioner duly appointed to take the depositions of Alexander Kalbaugh, George G. Tasker, and William Abernathy, whose names are subscribed to the foregoing depositions, do hereby certify that previous to the commencement of the examination of the said Alexander Kalbaugh, George G. Tasker, and William Abernathy, as witnesses in said suit between Daniel R. Brant, complainant, and The Virginia Coal and Iron Company and Jane Sinclair, defendants, they were each, respectively, duly sworn by me to testify the truth, the whole truth, and nothing in relation to the matters in controversy between the said Daniel R. Brant, complainant, and The Virginia Coal and Iron Company and Jane Sinclair, defendants, so far as the' should be re-

spectively interrogated concerning the same; that said depositions were taken at the respective residences of the witnesses in the county of Mineral and State of West Virginia, on the 8th day of January, 1873, and that after said depositions were taken by me as aforesaid, the interrogatories, cross-interrogatories, and answers thereto, as written down, were read over to said witnesses respectively, and that thereupon the same were respectively signed and sworn to by them, the said Alexander Kalbaugh, George G. Tasker, and William Abernathy, before me, the oath being administered by me, said commissioner, at the place and on the day and year last aforesaid; and that I have no interest, either directly or indirectly, in the suit aforesaid in which these depositions are taken, and am not counsel for either of the parties to said suit.

218 (Signed) JAS. B. GIBSON, [SEAL.]
Justice of the Peace of Mineral County, West Va.

Exceptions endorsed on the foregoing depositions.

The plaintiff excepts to all the testimony in the within depositions in reference to the value of the land in controversy, as there is no evidence they are experts or have any knowledge on the subject, and *the* they only purport to give the opinion of the witnesses on the subject.

Jan. 27th, 1873.

(Signed) McKINNON, SMALL & BRYANT,
For Plffs.

The complainant, Daniel R. Brant, on, to wit, the 23d day of February, 1874, filed in said cause, in this court, his appeal-bond herein; which was approved by the court, and reads as follows:

Know all men by these presents that Daniel R. Brant, the complainant hereinafter mentioned, as principal, and John P. White, as surety, are held and firmly bound unto The Virginia Coal and Iron Company and Jane Sinclair, or either of them, in the sum of three hundred dollars, lawful money of the *the* United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and

219 administrators, jointly, severally, and firmly, by these presents, sealed with our seals this seventeenth day of February, A. D. 1874.

Whereas lately, at a circuit court of the United States held in and for the district of West Virginia, in a suit depending in said court upon a bill in chancery filed by said Daniel R. Brant against said Virginia Coal and Iron Company and Jane Sinclair, a decree was entered on or about the 8th day of January, A. D. 1874, in favor of the said Virginia Coal and Iron Company and Jane Sinclair, and against said Daniel R. Brant, by which decree said bill was dismissed, and said Daniel R. Brant has prayed an appeal from said decree so entered as aforesaid to the Supreme Court of the United States:

Now, therefore, the condition of the above obligation is such that if said Daniel R. Brant shall prosecute said appeal with effect, and answer all damages and costs which may accrue to said Virginia Coal and Iron Company and Jane Sinclair, or either of them, or to the officers of the court, if he shall fail to make good said appeal, then the above obligation to be void; otherwise to remain in full force.

DANIEL R. BRANT. [SEAL.]
JOHN P. WHITE. [SEAL.]

In presence of—
P. A. HOYNE,
NORMAN HALL

220 STATE OF ILLINOIS,
County of Cook, ss:

John P. White, being first duly sworn, deposes and says that he is worth in real estate at least the sum of ten thousand dollars over and above all his indebtedness subject to execution; that he is a resident of said Cook County, and said real estate is situated therein, and that he is the person whose name is subscribed to the foregoing bond as surety.

JOHN P. WHITE.

Sworn to before me and in my presence subscribed this 20th day of Feb., 1874.

PHILIP A. HOYNE,
U. S. Commissioner Northern Dist. Illinois.

UNITED STATES OF AMERICA,
Northern District of Illinois:

I, Philip A. Hoyne, a United States commissioner for the northern district of Illinois, residing in Chicago, Illinois, do hereby certify that on the twentieth day of February, in the year one thousand eight hundred and seventy-four, personally appeared Daniel R. Brant and John P. White, whose names are subscribed to the foregoing instrument as the parties thereto; they are personally known to me to be the individuals described in and who executed the foregoing instrument, and
221 duly acknowledged to me that they executed the same freely and voluntarially as their free act and deed, for the uses and purposes therein mentioned.

Witness my hand and official seal at Chicago, Illinois, this 20th day of February, A. D. 1874.

PHILIP A. HOYNE, U. S. COMMISSIONER NORTH'N DISTRICT OF ILLINOIS, CHICAGO, ILL.

PHILIP A. HOYNE,
U. S. Commissioner North'n Dist. Illinois.

UNITED STATES OF AMERICA,
District of West Virginia, ss: ss:

Circuit court of the United States for the district of West Virginia.

I, William H. Hatcher, clerk of the circuit court of the United States for the district of West Virginia, do hereby certify that the above and foregoing is a true, perfect, and complete transcript of all papers and proceedings now on file in my office, and of all orders made and entered of record in said court, together with all the evidence and appeal-bond in a certain cause lately pending in said court on the equity side thereof, wherein Daniel R. Brant was complainant and The Virginia Coal and Iron Company and Jane Sinclair were defendants.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at Parkersburg this 4th day of Sept., A. D. 1874.

[SEAL.]

W. H. HATCHER,
Clerk C. C. U. S., D. W. Va.

222 UNITED STATES OF AMERICA, *ss:*

Supreme Court of the United States. October term, A. D. 1874.

DANIEL R. BRANT, APPELLANT,
vs.
THE VIRGINIA COAL AND IRON COMPANY AND Jane Sinclair, appellees.

And afterwards, to wit, on the second Monday of October, A. D. 1874, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Daniel R. Brant, by John J. McKinnon, his solicitor, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, the court below erred in dismissing the bill of the complainant, Daniel R. Brant, and in refusing to grant the relief prayed in said bill, and the said Daniel R. Brant prays that the decree dismissing said bill
223 may be reversed, annulled, and altogether held for nought, and that such order may be made herein as the nature of his case may require.

JOHN J. McKINNON,
Solicitor & of Counsel for Appellant, Daniel R. Brant.

(Indorsement on cover:) No. 252. Daniel R. Brant, appellant, vs. The Virginia Coal and Iron Company & al. West Virginia C. C. U. S. Filed 19th September, 1874.

IN THE

SUPREME COURT

OF THE UNITED STATES.

No. 252.

DANIEL R. BRANT, Appellant.
—*vs.*—
THE VIRGINIA COAL AND IRON CO. et al., Appellees.
In Chancery.

ARGUMENT

—OF—

JOHN J. McKINNON,

FOR APPELLANT.

CHICAGO:
Beach, Barnard & Co., Legal Printers, 98 Randolph Street.
1876.

IN THE

SUPREME COURT

OF THE UNITED STATES.

No. 252.

DANIEL R. BRANT,
Appellant,
—*vs.*—
THE VIRGINIA COAL AND IRON CO. et al.,
Appellees.
} In Chancery.

ARGUMENT

—OF—

JOHN J. McKINNON,

FOR APPELLANT.

CHICAGO:
Beach, Barnard & Co., Legal Printers, 98 Randolph Street.
1876.

MAY IT PLEASE YOUR HONORS:

The case presented in the record is predicated on the following state of facts:

STATEMENT.

On the 14th day of February, 1831, Robert Sinclair, of Hampshire county, Virginia, being the owner of some personal property, and the real property in controversy, by his last *will* and testament of that date, made the following devise, the construction of which constitutes this case:

"I give and bequeath to my beloved wife, Nancy Sin-
"clair, *all my estate, both real and personal;* that is to say,
"all my lands, cattle, horses, sheep, farming utensils,
"household and kitchen furniture, with everything that I
"possess, *To have and to hold during her life*, AND TO DO
"WITH AS SHE SEES PROPER BEFORE HER DEATH."

On the 1st day of April, 1831, after making this will, Robert Sinclair took the last step in life, and appeared before the bar of his Maker, leaving him surviving a widow and eight children, his heirs at law.

One of these children, Jane Sinclair, was at that time, and for many years before had been, and still is, an idiot or insane person.

On the 18th day of April, 1831, the will of Robert Sinclair was duly proven and probated in the County Court of Hampshire county, Virginia.

On the 19th day of February, 1839, the widow, Nancy Sinclair, whose intelligence appears from the sign of the cross, whereby she acknowledges the writing of her name, received the following document:

"I have bought the tract of land on which Nancy Sinclair lives, being one hundred and ten acres, for eleven hundred dollars, five hundred to be paid when she makes the deed, and six hundred, twelve months thereafter, with interest, the payment of the whole to be secured by a mortgage with interest: she reserves the graveyard, and right to live on, or rent the farm during her natural life, free from disturbance. *I am to have the right to mine coal or iron ore, but in such manner as not to injure the crop, or do her or her tenants injury.*

"February, 19th, 1839."

"DUFF GREEN."

"GEORGE G. TUCKER."

"For value rec'd, I do assign the within to Hector Sinclair and D. R. Brant.

"*Test:* ROBERT S. DAVIS.

"NANCY ⊠ SINCLAIR."

On the 20th day of July, 1839, Nancy Sinclair affixed "HER MARK" to a deed in the following words:

"THIS INDENTURE, made this 20th day of July, in the year eighteen hundred and thirty-nine, between Nancy Sinclair, of the County of Hampshire and State of Virginia, of the one part, and the Union Potomac Company, incorporated by an Act of the General Assembly of the State of Virginia, of the other part. *Witnesseth*, that, for and in consideration of the price or sum of one thousand one hundred dollars, by the said Company to the said Nancy Sinclair in hand paid, at and before the sealing and delivery of these presents, the receipt whereof she doth hereby acknowledge, the said Nancy Sinclair hath granted, bargained and sold, aliened, enfeoffed and conveyed, and by these presents doth grant, bargain and sell, alien, enfeoff, release, convey and confirm unto the Corporation of the Union Potomac Company aforesaid, its successors and assigns, the following described tract or parcel of land lying and being in the County of Hampshire and State of Virginia aforesaid, to wit: *All that tract or parcel of land on which the said Nancy Sinclair now resides, being the same which was conveyed to the said Nancy by the last Will and Testament of her late husband, Robert Sinclair*, and was conveyed to the said Robert by an indenture of bargain and sale by Robert Abernathy, and was conveyed to the said Robert Abernathy by a like deed of bargain and sale by the heirs of the late John

Abernathy, to whom the same was conveyed by letters patent; all of which will more fully appear by reference—the said patent, and the several deeds of conveyance, as well as the beginning and metes and bounds thereof, as and for one hundred and ten (110) acres, be the same more or less, reserving to the said Nancy the use and occupancy thereof for agricultural purposes during her natural life, and in perpetuity one-eigth of an acre, including the grave of the said Robert Sinclair, together with all and singular the buildings, improvements, ways, waters, water-courses, rights, members, privileges, advantages, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, rents, issues and profits thereof, *and all the estate, right, title and interest, trust, property, claim and demand whatsoever, at law and equity, of the said Nancy Sinclair, of, in, and to the same.* To have and to hold the said tract or parcel of land, with the appurtenances thereto belonging, unto the Corporation, the Union Potomac Company aforesaid, its successors and assigns, to the only proper use of the said Company, its successors and assigns forever. And the said Nancy Sinclair, for herself and her heirs, doth hereby covenant, promise and agree to, and with the said Company, its successors and assigns, *that she and all persons claiming under her* shall and will, from time to time, and at all times hereafter, at the reasonable request, costs and charges of the said Company, its successors and assigns, make and execute, acknowledge and deliver all and every such further deed, conveyance and assurance in the law whatsoever, for the better conveying and assuring to the said Company, its successors and assigns, the said premises, with appurtenances hereinbefore described and mentioned, to be bargained and sold according to the true intent and meaning of the parties to these presents. as by the said Company, its successors or assigns, by any of its or their counsel, learned in the law, shall be reasonably devised, advised or required; and the said Nancy Sinclair hereby also covenants, for herself and her heirs, that she, the said Nancy Sinclair, her heirs and assigns, the said tract or parcel of land and premises above described and herein mentioned to be granted, bargained and sold, with the appurtenances, unto the said Company, its successors and assigns, shall and will warrant, and forever defend by these presents against the claims of all persons whatsoever.

"IN TESTIMONY WHEREOF, the said Nancy Sinclair has hereunto set her hand and seal on the day and year first above written.

Her
"NANCY ✕ SINCLAIR. [SEAL.]
mark.

"Signed, sealed and delivered,
"in presence of

"STATE OF VIRGINIA,)
"HAMPSHIRE COUNTY.)

"This 20th day of July, eighteen hundred and thirty-nine, received from the Union Potomac Company, the sum of one thousand one hundred dollars, being the consideration expressed to be paid in the aforegoing indenture.

Her
"NANCY ✕ SINCLAIR.
mark.

"*Witness :* R. DAVIS."

"HAMPSHIRE COUNTY, ss.

"We, Reuben Davis and John Sloan, Justices of the Peace for the County aforesaid, in the State of Virginia, do hereby certify, that Nancy Sinclair, a party to a certain deed, bearing date the 20th day of July, 1839, and hereto annexed, personally appeared before us, in our County aforesaid, and acknowledged the same to be her act and deed, and desired us to certify the said acknowledgment to the Clerk of the County Court of Hampshire, in order that the said deed may be recorded. Given under our hands and seals this 20th day of July, 1839.

"JOHN SLOAN, [SEAL.]"
"REUBEN DAVIS. [SEAL.]"

"HAMPSHIRE COUNTY, *to wit :*

"Be it remembered, that on the 20th day of August, 1839, this Indenture was presented in the office, and with the certificates thereto annexed, admitted to record.

"*Teste :* JOHN B. WHITE, C. H. C.

Quære. By what right, power or authority does Nancy Sinclair reserve to *herself one eighth* of an acre in *perpetuity*.

On the same day, to secure the payment of the consideration mentioned in this deed, Mrs. Nancy Sinclair received from the Union Potomac Co., through the

agency of "Duff Greene," a Bond and Mortgage, in these words: —

"KNOW ALL MEN BY THESE PRESENTS, That the Union Potomac Company, incorporated by an act of the General Assembly of the State of Virginia, is held and firmly bound unto Nancy Sinclair in the full and just sum of twenty-one hundred dollars, current money, to be paid to the said Nancy Sinclair, or to her certain attorney, executor, administrator, *or assignee;* to which payment, well and truly to be made and done, the said Company binds itself, its successors and assigns, firmly by these presents. Sealed with its corporate seal, and dated this twentieth day of July, in the year eighteen hundred and thirty-nine.

"The condition of the above obligation is such, that if the above bounden Company, its successors, or assigns, doth and shall, well and truly, pay, or cause to be paid, unto the above named Nancy Sinclair, her executors, administrators, *or assigns*, the sum of one thousand one hundred dollars, within twelve months after they shall have been required so to do, with legal interest thereon, payable on the twentieth day of July, in each and every year, then this obligation to be void, otherwise to remain in full force and virtue.

"JAMES W. McCULLOH, } *A Committee of*
"CHARLES F. MAYER, } *Directors.*

{ UNION POTOMAC COMPANY SEAL. } DUFF GREENE, *President of the Union Potomac Company.*"

"For value received, I assign the within Bond to Daniel R. Brant and Hector Sinclair.

"Witness my hand and seal, Aug. 24, 1854.

"NANCY Her ✕ mark. SINCLAIR. [SEAL.]

"*Tes.:* R. DAVIS, *Clerk.*"

"This INDENTURE, made the 20th day of July, eighteen hundred and thirty-nine, between The Union Potomac Company, incorporated by an act of the General Assembly of Virginia, of the one part, and Nancy Sinclair, of the State of Virginia, in the County of Hampshire, of the other part,—Whereas, the said Union Potomac Company, by its bond or obligation, duly executed, bearing

date the 20th day of July, in the year eighteen hundred and thirty-nine, stands bound unto the said Nancy Sinclair, her executors, administrators, or assigns, in the sum of two thousand one hundred dollars, current money, with the conditions thereunder written, for the payment of the sum of one thousand one hundred dollars, within twelve months after the same shall have been demanded, with legal interest thereon, payable on the 20th day of July, in each and every year; as by the said bond and conditions may more fully appear.

"NOW THIS INDENTURE WITNESSETH, That the said Company, in consideration of the said debt, or sum of one thousand one hundred dollars, owing to the said Nancy Sinclair, as aforesaid, and for the better securing the payment thereof to the said Nancy Sinclair, her executors, administrators or assigns, according to the condition of the said bond or obligation, and also in consideration of the further sum of five dollars, current money, to the said Union Potomac Company in hand well and truly paid, at and before the sealing and delivery of these presents—the receipt of which the said Union Potomac Company doth hereby acknowledge—the said Company has granted, bargained and sold, released and confirmed, and by these presents doth grant, bargain and sell, release and confirm unto the said Nancy Sinclair, her heirs and assigns, all that tract or parcel of land lying and being in the County of Hampshire aforesaid, *which was, on this 20th day of July*, 1839, *conveyed by deed of bargain and sale by the said Nancy Sinclair to the said Union Potomac Company, as and for one hundred and ten acres, be the same more or less.* To have and to hold the said tract or parcel of land, and every part and parcel thereof, with the appurtenances thereunto belonging, to the said Nancy Sinclair, her heirs and assigns, to their own use and behoof. *Provided, always*, and it is the true intent and meaning of these presents, and of the said parties hereto, that if the said Company, its successors or assigns, doth and shall well and truly pay or cause to be paid unto the said Nancy Sinclair, executors, administrators or assigns, the said full sum of one thousand one hundred dollars, current money, with the interest for the same, on or before the time specified and described by the terms of the bond or obligation aforesaid, without any deduction or abatement whatsoever, then and from thenceforth these presents, and every matter and thing therein contained, shall cease and be utterly null and void, any-

thing herein to the contrary thereof in anywise notwithstanding. And this Indenture further witnesseth, that the Union Potomac Company, aforesaid, has constituted and appointed, and by these presents doth constitute and appoint John Sloan, Esq., of Hampshire County, and the State of Virginia, to be its true and lawful attorney, with full power and authority to appear for it, and in its name, and as its act and deed, to acknowledge this Indenture before any person or persons having authority by the laws of the State of Virginia to take the said acknowledgment, in order that the same may be recorded according to law. In witness whereof, the Union Potomac Company, aforesaid, has caused this deed to be signed by Duff Green, its President, and its corporate seal to be hereunto affixed, on the day and year first above written.

" DUFF GREEN, *President of the Union Potomac Company.* [SEAL.]

" Signed, sealed and delivered, in presence of

" HAMPSHIRE COUNTY, *to wit:*"

" Be it remembered, that on the 21st day of August, 1839, this Indenture was presented in the office, acknowledged by John Sloan, attorney in fact for the Union Potomac Company, and admitted to record.

" *Teste:* J. B. WHITE, C. C."

On the 24th day of August, 1854, Nancy Sinclair, being the owner of this bond and mortgage—then *still unpaid and unsatisfied*—transferred the same to the appellant, Daniel R. Brant, and one Hector Sinclair, in consideration of their undertaking in the following agreement :

The transfer is in the following words :

" KNOW ALL MEN BY THESE PRESENTS, That whereas I have and own *a life interest in* a certain tract of land, on which I now reside, *which interest* I sold and conveyed to Duff Green, as agent for the Union Potomac Company, by deed bearing date the 20th day of July, 1839, for the sum of eleven hundred dollars, and which sum the said Green has never yet paid, except thirty dollars of interest, and the said Green did, at the same time, on the 20th day of July, 1839, make and execute to me a mortgage upon the same property, to secure the purchase money, none of which has ever been paid. And now, inasmuch as my

son, Hector Sinclair, and Daniel R. Brant, has bought out the heirs in the said estate, I therefore, by these presents, for and in consideration of the sum of one hundred dollars, cash, to be paid to me by Hector Sinclair and Daniel R. Rrant at the expiration of each and every year, so long as I live, and at my death the said tract or parcel of land hereby meant or mentioned, on which I now reside, containing one hundred and twenty acres, more or less, is paid for in full, the receipt of which is hereby acknowledged, yet, nevertheless, I retain, if ever I should *knead* or desire it for my own use, to live in the house, formerly builded and used by Robert Sinclair, situated on the Northeast corner of said farm, as long as I live; but in no event to exercise any ownership or control over it, except used by myself to live in. I have, therefore, hereby sold and conveyed unto the said Daniel R. Brant and Hector Sinclair all my entire interest in said land, and likewise in said mortgage, if ever said mortgage should come on this said tract of land hereby conveyed. And further, I hereby give and deliver up to them, the said Daniel R. Brant and Hector Sinclair, free and peaceable possession to the premises herein described or intended.

" Given under my hand and seal, on this 24th day of August, in the year of our Lord one thousand eight hundred and fifty-four.

Her
NANCY ✕ SINCLAIR. [SEAL.] "
mark.

" Signed, sealed and delivered,
in presence of
"JOSEPH W. DAVIS."

On the 2d day of July, 1857, the appellant and Hector Sinclair, having thus burdened themselves with the support of Nancy Sinclair, and being the owners by assignment of this "bond and mortgage," still unpaid and unsatisfied, to enforce payment thereof, commenced a foreclosure suit thereon in the Hampshire Circuit Court.

The prayer of the bill in that case is in these words :

" The prayer, therefore, of this bill is that the said mortgage may be foreclosed, and sale of the estate purchased by the said Company be decreed, in order to the payment

of the said debt and interest, and for any and all other and proper relief in the premises which may be just and proper."

To this bill, the Union Potomac Company entered an appearance, and put in an answer in the nature of a plea in abatement, denying demand of the money secured by the bond. The answer in that case is as follows :

" The answer of the Union Potomac Company to a bill of complaint, exhibited against it in the Circuit Court of Hampshire County by Hector Sinclair and Daniel R. Brant. This respondent, making the usual reservations for answer thereto, or to so much thereof as it is advised is material to answer, says that it admits the execution of the mortgage, bond and agreement, filed with the bill as Exhibits B, C, D; but it denies that it has 'ceased to exercise its corporate franchise,' or has a mere nominal existence, as is charged in the bill, or that it has failed to comply with the requirements of its charter, or has, in any way, lost any of its rights and powers under its charter. Respondent also denies the allegation in the bill, that it has no known representative, on whom a demand, according to the provisions of the mortgage, could be made; on the contrary, Duff Green, who was the agent of respondent that made the agreement with Nancy Sinclair, and as its president executed the said mortgage, is now, and has ever since been, the president of said Company, duly appointed according to the provisions of its charter. Respondent, for further answer, says that it is not true that any demand was ever made on it twelve months before the filing of the bill, for the payment of the principal sum due (as respondent insists by the provisions of said mortgage)—the said Nancy Sinclair was bound to do so before seeking payment of the said principal sum; nor was any demand made at any time before the filing of the bill, as required by the mortgage, by any one legally authorized to make it; and the excuses set up in the bill for not making such demand are mere pretences for evading the clear and express requirements of the contract. And respondent avers that, so far from there being no one known, on whom a demand could be made, that said Duff Green was publicly known to be its president and entrusted with the general management of its affairs, and was repeatedly, indeed almost every year, and of late years several times in a year, in the county

of Hampshire, engaged in the management of the lands of respondent, and in the transaction of business for this respondent. Without this, that, &c., respondent, denying all fraud, &c., prays to be hence dismissed with his costs.

{ SEAL } { U. P. CO. } "UNION POTOMAC COMPANY.
"By DUFF GREEN, *President.*"

"HAMPSHIRE COUNTY—*to wit:*

"Duff Green, President of the Union Potomac Company, personally appeared before the subscriber, a Justice of the Peace in and for the county aforesaid, and made oath that the foregoing answer is true, to the best of his knowledge and belief. Given under my hand this 5th day of September, 1857.

"DAVID GIBSON."

On the 16th day of April, 1858, the Court entered a decree in said cause in the following words:

"This cause came on to be heard, this 16th day of April, 1858, on the Bill and Exhibits filed therewith, and the answer of the Union Potomac Company filed during this term, and replication thereto, and was argued by counsel.

"On consideration whereof, the Court being of opinion that the complainants are at this time entitled to have a decree against the defendants, for all the arrearages of interest on the principal sum of one thousand one hundred dollars, which interest was payable on the 20th day of July in the year 1840, and afterwards on the 20th day of July in each succeeding year—and also a decree for a sale of the mortgaged premises, to satisfy and pay off the said arrearages of interest—doth adjudge, order and decree, that unless the defendants do, within sixty days after the date of this decree, pay to the said complainants the said several arrearages of interest up to the 20th day of July, 1857, amounting in the aggregate to the sum of $1,188, then James D. Armstrong and Robert White, who are appointed Commissioners for the purpose, shall sell to the highest bidder, before some public tavern in the town of Piedmont, the lands in the bill and proceedings mentioned, on the following terms, viz: Ten per cent. of the price to be paid in hand, 23⅓ per cent. on or before the 1st day of September, 1858, and the residue in two equal installments—the first to be paid on the first day of April, 1859, and the second on the first day of September, 1859, taking bond and security for the deferred payments, and retaining

the legal title as further security ; the said Commissioners are directed to advertise, for at least four weeks, the times, place and terms of sale, in some newspaper printed at Piedmont, (if any), and such other newspapers as the said commissioners shall deem proper; and, before they receive any money under this decree, execute a bond, before the Clerk of this Court, in the penalty of $5,000, conditioned as the law requires."

On the 14th day of November, A. D. 1858, the Commissioners named in the decree—James D. Armstrong and Robert White—published the following advertisement :

"*Public Sale of Valuable Coal and Farming Land.*"

"By virtue of a decree rendered by the Circuit Court of Hampshire County, Virginia, in a cause in said Court depending, wherein Hector Sinclair, &c., are complainants, and the Union Potomac Company is defendant, the undersigned Commissioners will offer at public sale, to the highest bidder, before the Woodside House in Piedmont, Hampshire County, Virginia, on Friday, the 24th day of December, 1858, the following tract of land, or so much thereof as is necessary to satisfy said decree (except one-eighth of an acre, including the grave of the late Robert Sinclair), to wit : *the tract of land conveyed by Nancy Sinclair to the said Union Potomac Company*, containing 110 acres, more or less, about one hundred acres of which, it is said, are in a good state of cultivation ; this land lies near Piedmont, directly in the coal region, a short distance above Pine Swamp run, about ¾ of a mile from the junction of said run with the North branch of the Potomac. It is said to contain all the veins of coal to be found in the coal basin ; the large fourteen feet vein has been opened at one end ; and it is believed there are about sixty acres of the vein well covered by this land. Nancy Sinclair, who is now a very old woman, has a life interest in the land. Terms of sale : ten per cent. of the purchase money in cash, and 23⅓ per cent. on or before the first day of April, 1859, and the residue in two equal installments—the first to be paid on the first day of April, 1860, and the other on the first day of April, 1861 : bonds, with approved security, will be required for deferred payments, and the legal title to be retained as a further security. Sale to commence at 12 o'clock M.

"ROBERT WHITE, } *Special*
"JAMES D. ARMSTRONG, } *Commissioners.*
"November 14th. 1858. t.-d. s."

On the 24th day of December, 1858, the Union Potomac Company having failed to pay or satisfy the decree, the Commissioners therein named made a sale of the *mortgaged premises* to one Patrick Hammill, who thereunder succeeded to all the rights of the Union Potomac Company.

On the 25th day of August, 1864, Nancy Sinclair departed this life.

On the 26th day of September, 1870, having previously acquired the fee to seven-eighths of the premises, and learning that the defendant, the "Virginia Coal and Iron Co," had not only wrongfully and fraudulently gone into possession of the property, and induced appellant's tenant to attorn, but had actually engaged in mining and selling coal from the property, appellant commenced this suit, and asked that the defendant be enjoined and restrained in the premises, and that it account for the coal mined and timber cut.

The prayer of the bill is as follows:

"That the defendant, 'The Virginia Coal and Iron Company' may, if it can, show why your orator should not have the relief hereby prayed, and (without oath, however, the oath of said defendant, 'The Virginia Coal and Iron Company,' and the officers thereof, being hereby expressly waived) to the best and utmost of their several and respective knowledge, remembrance, information and belief, full and direct and perfect answer make to all and singular the premises. And that said defendant, 'The Virginia Coal and Iron Company,' upon being served with process herein, may be bound by all the proceedings in this cause, and that a guardian, *ad litem*, or some other proper person, be appointed by the court on behalf of the defendant, Jane Sinclair, and may answer the premises. And that the said defendant, 'The Virginia Coal and Iron Company,' its agents and attorneys, may be restrained by the injunction of this honorable Court from mining or excavating the said vein of coal, or any part thereof, and from selling or disposing of the same, or any part thereof. And that this cause be referred to the Master in Chancery of this Court, to take and state an account between your orator and the said defendant, 'The Virginia Coal and Iron Company,' as to the quantity, amount, and value of the timber

aforesaid, cut down, wasted, destroyed, and converted to its own use by the said defendant; and as to the amount, quantity and value of the coal aforesaid, mined, excavated, sold, and converted to its own use by said defendant, and that upon coming in of such report, that your Honors will declare your orator to be the owner in fee of an undivided seven-eighths part of said premises, and that your Honors will perpetually enjoin and restrain the said defendant, 'The Virginia Coal and Iron Company,' its agents and attorneys, from meddling or interfering therewith, in any manner or way, and that your Honors will order and decree that the said defendant, 'The Virginia Coal and Iron Company,' within a short time, to be specified by your Honors, pay to your orator whatever sum or sums may be found due or owing from said defendant to your orator, according to the report of said Master, for the timber and coal aforesaid, and for such further and other relief as to this honorable Court shall seem best."

On the 10th day of August, A. D. 1871, the defendant, "The Virginia Coal and Iron Company," filed its answer, *or a paper entitled an answer*, to this bill, in and by which it claims:

First. That Nancy Sinclair, under and by virtue of the will of Robert Sinclair, sold the property in fee to the Union Potomac Company.

Second. That by reason of the mortgage foreclosure, and sale to Patrick Hammill, complainant is estopped from asserting title to the property.

As legal conclusions, as well as matters of fact, the appellant denies these propositions.

On the hearing of the case, the Circuit Court dissolved the injunction, and dismissed the bill. From that decree the appellant prayed and perfected an appeal to this Court, and now here assigns for

ERROR:

1st. The Circuit Court erred in dissolving the injunction, and dismissing the bill.

2nd. The Court erred in refusing to grant the relief prayed for by the bill.

Argument.

The general question presented by the record may be thus resolved :

1st. Under the will Nancy Sinclair took only a life estate, and had no power to convey the fee, or divest the heirs of the reversion.

2nd. The complainant is in no manner or way estopped by reason of the foreclosure proceeding and sale thereunder.

These propositions will be considered in their order.

I.

Under the will Nancy Sinclair took only a Life Estate, and had no power to convey the fee, or divest the heirs of the reversion.

In view of the admission made by the principal defendant, it will not be necessary to consider the first part of this proposition, because it is admitted in the answer that Nancy Sinclair took only a life estate under the will. To assert the contrary would evince a want of information that we would regret to attribute to the learned counsel who prepared the answer.

It being admitted that Nancy Sinclair took only a life estate under the will, it follows as a necessary corollary, that upon the death of Robert Sinclair, the fee which he died seized of, and which he failed to devise by his will, vested in his heirs.

Carving out a part, implies that there is something left, from which the carved part was taken.

So where the owner of a fee grants or devises a life

estate to one, and makes a gift or gives a legacy to another, there still remains a something not granted, devised or given.

That something is the fee.

On the termination of the life estate, the *interest* vested in the life-tenant comes back or reverts.

To constitute a reversion, there must not only be a something to revert, but there must be some one to whom the reversion is to come.

Where a life-estate is only devised out of a fee, the fee vests in the heirs of the devisor, subject to the life estate.

Robert Sinclair was the owner of the fee; out of it he devised a life estate to his wife, and a legacy of one dollar each to his children.

He made no disposition of the fee.

Where did the fee go?

By force of law it vested in his heirs, subject to the life estate and payment of the legacies.

How are these heirs to be divested of that fee?

It is claimed that, notwithstanding Nancy Sinclair took only a life estate, *she* was empowered by the will to sell and convey the property in fee, and divest the heirs.

To this assertion it would be a sufficient answer that the *will* itself nowhere contains any such *power* or *authority*, and that if it did, then Nancy Sinclair never exercised or pretended to exercise it.

But, as a proper determination of the questions presented by the Rec rd is not only important to the appellant, but highly interesting as legal propositions, we invoke the patient attention of the Court.

Under the Statute of Wills in Virginia, as in most of the other States, real and personal property, *if not specially devised*, is distributed equally among the heirs-at-law of the intestate.

The correctness of this proposition will not be questioned.

That the rule is the same where the owner of lands in fee makes a devise thereof to another for life, without making any specific disposition of the fee, will not be gainsaid or controverted.

A rule never to be lost sight of in the construction of wills, is, that the heir is not to be disinherited without an express devise, or *implication importing so strong a probability, that an intention to the contrary cannot be supposed.*

1 Redfield, Wills, p. 425: n 5; also p. 434, Sec. 18.

Allen's Ex'r v. *Allen*, 18 Howard, p. 391.

Negative words are not sufficient to exclude the title of the heir. *There must be an actual gift to some other definite object.*

1 Redfield, Wills, p. 425.

Fitch v. *Weber*, 6 Hare, p. 145.

Another rule is: That Courts will look at the circumstances under which the devisor makes his will—as to the state of his property, his family, and the like.

1 Redfield on Wills, p. 425.

In a *deed* the *words* govern the *intention.* In a *will* the *intention* governs the *words.*

Edwards v. *Bibb*, 43 Ala., 666.

To determine with accuracy what the devisor, Robert Sinclair, intended by his will, makes it necessary that we know exactly the circumstances under which he made it, as to the state of his property, his family and the like, and then that we inquire whether, under the circumstances, the language he employs evinces an intention to give his wife not only a life estate in his property, but power, as well, to divest his heirs-at-law of the fee; or in other words, whether the language used gave her any greater power than a life tenant might have to the proper enjoyment of a life estate.

The words of the devise are very simple: "I give and "bequeath to my beloved wife, Nancy Sinclair, all my es- "tate, both real and personal—that is to say, all my lands, "cattle, horses, sheep, farming utensils, household and "kitchen furniture, with everything that I possess, *to have* "*and to hold during her life, and to do with as she sees* "*proper* BEFORE HER DEATH."

What were the circumstances as to property, family and the like, under which Robert Sinclair made this *will*, and by which we must conclude he was actuated?

He was a poor mountain farmer, possessed of this small tract, one hundred and ten acres of land, and some personal property. He was on his death bed. He was about to leave forever his aged wife and eight children—one of whom was, and still is, an idiot or insane person, and all of whom were even poorer in worldly goods, than he was.

He wished to provide for his companion in life as best he could. He knew that with the little farm and the small stock under her control for life, she would manage to get bread to eat and something to wear. He also knew that she was not only frugal and simple in her habits, as the children of the hills ever are, but he well knew that to divide, at that time, this pittance among his children, would deprive his wife of even a scanty living, and that if he did not make provision for her by will, his hard-earned little property would be so divided up that not only would her independence and means of existence be destroyed, but she might in her old days have to seek the bread of life at the door of charity.

That, as a matter of fact, Robert Sinclair only intended to give his wife a life estate in the property, with such complete power of *user* as a life tenant can have, and no more—is a *fact* fully established by extraneous evidence in the record.

It is a rule of law to which there is no exception, that a latent ambiguity arising out of intrinsic facts, in the con-

struction of a will, may be explained by facts in and out of the will, *and by parol evidence of intention.*

Hayden v. *Ewing*, 1 B. Monroe, 113.

Robert Sinclair, a son of the testator, 63 years old, with no interest in the subject matter, says :

"Robert Sinclair frequently expressed a desire that his property should be so left when he died, that his wife should own and enjoy the use of it while she lived, for her support, and desired that his children should inherit it at her death.

"He seemed to have a desire to will his property to his children direct, as he intended them to have it, but wanted his wife to have the use of it during her life, and then, at her death, they, the children would get it : but for fear the children might squander it, and his wife might come to want, he concluded to will it to his wife for her support during life.

"Robert Sinclair plainly said he wanted his property all to go to his children at the death of his wife.

"That he was at home at his father's residence when the will was made, and that John Junkins and William Abernathy and Thomas Abernathy were present when the will was made, and that Robert Sinclair was somewhat unwell, and talked and advised with my brother Alexander with regard to the distribution of his property, and it was decided that my father, Robert Sinclair, would and did, as he understood it, will all his property to his wife, Nancy, (my mother,) in trust, for her support, and for her use during her life, and at her death, he said, that then his children would certainly get it.

"John Junkins wrote Robert Sinclair's will.

"That he knows John Junkins ever since he was a boy, until he, Junkins, died, and that his business was that of a small farmer, and that he was a very poor man, and lived on rented land, and, once in a while, would teach a small country school, and that his mode of teaching was, as his articles said, to teach children to spell, read, and *right* and arithmatic, in Pike's old 'ritmatic to the double rule of three, to the best of his ability.

"John Junkins had no legal education whatever, and was a man of limited knowledge, and was not a lawyer or anything of the kind."

Elisha McRobie, a witness, 81 years old, a life-long friend of the testator, says :

"I knew Robert Sinclair in his life-time for, at least, thirty years previous to his death ; he lived on a little farm, in the Alleghany Mountains, in Hampshire County, Virginia, now Mineral County, West Virginia ; he was a very illiterate man ; could not write or read writing after it was wrote. I think he could read print a little.

"I had two conversations with Robert Sinclair at his residence ; the first one, two or three days before he made his will, I happened at his house and stayed over night with him, and he advised with me in both conversations, and conversed freely, and at some length, and his conversation was mainly about his will, and the distribution of his property. He said he did not think he was going to live long, and he wanted to arrange his business so as that his wife could hold the property for her support during her life ; that he meant and intended his children to have his property, but he thought it best and safest to give it all to his wife in trust, for her support and for her use during her life only ; and then, at her death, the children would have it. This was the substance of both conversations.

"He said if he willed his property direct to his children, they might squander it, and his wife might come to want, and he wanted her to have the use of it during her life, and that he knew she would not squander it away from her children ; and that he intended to so arrange it in his will that she could not sell the real estate, but that he wanted her to have the benefit and use of it during her life, and then, at her death, the children would get it.

"He did say he wanted to give his wife a life-estate only in his property, and gave as his reason that his children *was* a little reckless, or at least some of them, and he thought it would be more safe to will it all direct to his wife for her support during her life, and that she could live off of it and would keep it safe, or at least the most of it, and especially the real estate, for his children at her death, as he positively and clearly expressed a determination that his wife should not be permitted to sell or dispose of his real estate for any longer or greater period than during her natural life, but that she should have the use of it during her life.

"He plainly said frequently, in the conversations I had with him, that he intended his property to go to his children after the death of his wife.

"I knew John Junkins before he died for at least forty years. His business was that of a small farmer; he was a very poor man; always lived on rented land, and sometimes taught common schools, and in his contracts or articles of agreement with those who sent their children to school to him, he agreed that he would teach the children to spell and read and write and 'rithmetic—Pike's old arithmetic to the double rule of three—to the best of his skill and knowledge.

"John Junkins had no legal knowledge whatever; was a very common-place man, and totally ignorant in matters of law; he was not a lawyer, or anything of that kind.

"I have resided in the Alleghany Mountains ever since I was born*d*, or for eighty-one years, and never live' anywhere else, except when I was in the Army of United in the war of 1812, and I now live some ten miles from Robert Sinclair's farm, and never live' further away, but sometimes much nearer to it.

"Robert Sinclair was a Scotchman, and came to this country with his family in early day, and was very ignorant of the laws and usages of this country; and I, being also a Scotchman, but born in this country, I made his acquiantance when he first came to this country, and we were frequently together, and he was very communicative to me, and *I, therefore, know full well what his intentions were; and I am confident that he meant only by his will to make his wife, as it were, the guardian of his property, and for her support during her life only, and at her death he wanted his children to inherit it, as I have frequently heard him so express himself.*"

These witnesses, and the testimony, stand uncontradicted and uncontradictable.

If it be undertaken to construe into a power to sell, the ambiguous words—thrown in after, and coupled with the express devise for life—then we submit, in view of the law just stated, and it view of this testimony, that such was not the *intention* of the testator.

Robert Sinclair had no desire or intention to deprive his children of his property—naturally and legally theirs—but he was a just man, and therefore intended that, come what would, his bosom friend and the mother of his children should be so situated that while she remained behind

him, her living would be certain, and that after her death his property should go to his children, according to the Statute of Virginia. Thus circumstanced, this poor, unlettered child of the mountain called in the school master of the neighborhood—his best skilled friend—and asked him to prepare his will, so that his wife would have control of his property while she lived.

The school-master began to write, and, as will be seen by reference to the clause of the will under consideration, indulged in making the testator give, not only in general terms, but by specific and generic terms, all his real and personal property to his wife, in fee.

Thus he says :

" I give and bequeath to my beloved wife, Nancy Sinclair, all my estate, *both real and personal*—that is to say : *all my lands, cattle, horses, sheep, farming utensils, household and kitchen furniture, with everything that I possess.*"

Had the will stopped here, there can be no doubt but Nancy Sinclair would have taken an estate in fee absolute. But it is obvious from what follows that such was not the intention of the dying man. He wished to give his wife a life estate *only*, with such full control of the property, while she lived, as a life tenant could have, and to express his intention in that respect, he limited the devise in these words:

" *To have and to hold during her life, and to do with as she sees proper before her death.*"

He did not give, or pretend to give, her power to sell the property in fee.

He made no disposition of the reversion after her life estate.

He did not give, or pretend to give, her power to defeat the fee : that, on his death, vested in his children.

It is a rule of law, old as the hills, and as equitable as it is ancient, that the reversion is not to be defeated, or the heirs robbed by implication, without express words.

Dashwood v. *Peyton*, 18 Ves., 40.

There must be an actual gift to some other definite object.

There is no such gift in this will.

The fee is not disposed of, and no power is given by the will to dispose of it.

By force of the statute the fee descended to the heirs, and by force of law the reversion was drawn to it.

Robert Sinclair, by his will, gave his wife, as life tenant, such power over the property as would enable her, beyond all doubt, to have the full *use* of it up to the hour of her death.

The power which he gave her—if a power at all, other than that of life tenant—could only apply to the personal property perishable in its nature.

Seigwald v. *Siegwald*, 37 Ill., 431.
Gregory v. *Cowgill*, 19 Mo., 415.

Unlike realty, the perishable property, described as "cattle, horses, sheep, farming *utensils*, household and "kitchen furniture," was never likely to reach the heirs, and therefore, because of the very nature of this property, she was empowered to do with *it* as she saw proper before her death.

"*And to do with as she sees proper before her death.*"

To what do these words relate? Do they refer to the *life estate*, with which they are linked by the copulative "*and*"? Or do they relate or refer to the *fee*, that by force of law vested in the heirs as life went out of the testator?

Which of these *estates* does the will empower the *life tenant* "to do with as she sees proper BEFORE *her death*"?

By the death and will of Robert Sinclair two *estates* vested. The children took the fee; the wife took a *life estate*.

What words are there in the will that empower the *life tenant* to sell the *real estate* and divest the heirs of the *fee?*

The right given to Nancy Sinclair by the words, "*To "have and to hold during her life, and to do with as she sees "proper before her death,*" did not become operative until the death of the testator ; when that happened the *fee* was in the *heirs.*

With the *life estate* given her by the will, she is empowered to do as she sees proper, "*before her death.*"

And here mark the diversity.

She is not empowered by the will to do anything with the particular *estate*, or with any other estate that would or could be of any effect *after her death.* The power to do as she sees proper is limited to *her life* or *before her death.*

Why does the will confine her power over the property to *her life* or *before her death ?*

If the testator intended to confer on the life tenant power to dispose absolutely of the property in fee, why did he use these restraining words, "*before her death?*"

The most remarkable features of this extraordinary will are the number of limitations imposed on the *devisee.*

The devise in fee absolute is limited to a *life estate.*

Following this limitation is the power—"*to do with as she sees proper*"—and then this power of doing as she sees proper is again limited to "*before her death.*"

Do not these limitations clearly show that it was the intention of the testator to give his wife, as life tenant, the greatest power of *user* he could give her over the property while she lived, but no longer ?

First, the will gives her the property in *fee ;* then it cuts the fee down to a *life estate* ; then it gives her a power in connection with the life estate, and then this power is limited to "*before her death.*"

Obviously, the struggle in the mind of the testator was to make the best possible provision he could for his wife while she lived—to give her all the power of user that a

life tenant could have, but so as no act of the wife over the property should extend beyond her life.

And now, to test the force of this reasoning, suppose the restraining words, "*before her death*," had not been added to the words of power, and that the devise read, "*To have "and to hold during her life and to do with as she sees "proper*," would it be contended, or could it be said, that the words "*and to do with as she sees proper*," following the express devise for life, would empower the life tenant to dispose of the landed estate in fee?

If, then, these words "*and to do with as she sees proper*," when standing alone, would not constitute a power in the life tenant to sell the land in *fee*, how can it be said that they are strengthened or enlarged in their operation by the restraining words "*before her death?*"

Formulated, the *summum* of the theory contended for by the appellee is:

That when a power is silent as to the *form* of act whereby it is to be executed, the donee of the power may execute generally without reference to the power.

That the will under consideration confers on the devisee for life a power to "do as she sees proper *before her death*" with the property, real and personal, mentioned in the will, without defining the *form* of act whereby the power should be executed.

And therefore, that the deed given by Nancy Sinclair to the Union Potomac Company, was not only a good execution of the power, but that it divested the heirs, and conveyed the land in fee.

As the premises are, so must the conclusion be.

The result of a mathematical problem is proved by means of its own parts.

A conclusion drawn from any given case or legal proposition, is tested by its premises.

Thus tried, the argument of appellee shatters itself.

In the process of legal or logical reasoning, the law constitutes the major premise, the facts the minor premise.

The accord or discord of these determines the conclusion or judgment.

The major premise is always positive.

By its requirements is tested the analogical accord or the discord therewith of the facts constituting the minor premise.

If we try the theory of the defense by these rules, its inherent weakness will be apparent.

Does the appellee assert as law, that where a power is silent as to the *form* of act whereby it is to be executed, but imposes *limitations* as to the extent or duration of the estate that may be disposed of under the power, that the donee may, by a general act, convey a greater estate than authorized by the power?

Such is the position assumed by the appellee. Otherwise, there can be no accord between his major and minor premises.

The major premise states the proposition generally, and without reference to any limitation.

In the minor premise we find incorporated on the general power a *limitation*, restraining and limiting a disposal of the property for a longer period than the life or *before the death* of the devisee.

Can a donee empowered generally to convey a life estate by force of such power, grant a fee?

If a life tenant empowered generally to convey a life estate, can, by a general conveyance, not referring to the power, grant a fee by force of the power, then the issue in the principal case is at once solved; because such was the power vested in the life tenant, Nancy Sinclair, by the words "*and to do with as she sees proper*," restrained and limited by the words, "*before her death.*"

What power has she by the will to dispose of the *fee?*

None whatever—and she never did dispose or attempt to dispose of the *fee*.

What she did dispose of by her deed was that "*which* "*was conveyed to her by the last will and testament of her late* "*husband, Robert Sinclair.*"

The will conveyed to her a *life estate* in the land. The precise *interest* she took in the land under the will is exactly what she conveyed by her deed; and in the deed she refers to the will as showing what estate she took and had in the land under and by force of the will.

Note how carefully she limits her *grant* in the *deed* to the *specific property* which was *conveyed* to her by the *will*, avoiding all reference to the *fee*, or to any *power* conferred on her by the will.

The deed is not a mere general conveyance of a specific quantity of land; on the contrary, it is thus carefully limited: "*being the same which was conveyed to the said Nancy* "*Sinclair by the last will and testament of her husband,* "*Robert Sinclair.*"

She does not undertake to convey generally, or by virtue of a power, but is careful to limit her grant *to her own particular estate*, or to what was conveyed to her, and so as to exclude the idea that she either conveyed generally, or that she conveyed in virtue or by force of a power.

What *thing* might she "do with" as she saw proper before her death?

That these ambiguous words were employed for the purpose of giving the *devisee* greater power than a mere life tenant might be supposed to have, is not only presumable but obvious, from the fact that a part of the property included in the devise consisted of "cattle, horses, sheep, "farming utensils, household and kitchen furniture."

Siegwald v. *Siegwald*, 37 Ill., 431.
Gregory v. *Cowgill*, 19 Mo., 415.

But does it follow that because she might sell a cow, or

a horse, or a sheep, the possession of and title to which she had, therefore she might also sell and convey the land in fee, the title to which was vested in the heirs ?

That these words were used in connection with the life estate to enable the life tenant to sell and dispose of the perishable personal property mentioned, is more than probable. In this sense they may well be used, to give effect to the intention of the testator in employing them. But, that they are of such wide import, operation or effect as to enable the life tenant to defeat the reversion, and rob the heirs of the fee to which they do not refer or relate, is stretching the doctrine of implication to an extent that neither law nor justice will ever go.

A power to sell and convey real estate and divest the heirs of the fee, is never contained in such language as to have and hold during her life, and *to do with as she sees proper before her death.*

Look into all the works on powers ; examine every case wherein the doctrine is considered, and nowhere will it be found that this, or like language, or language of similar import, vests a life tenant with power to sell the fee or divest the heirs.

The falsity of the proposition is self-evident.

Having only a life estate in the property, for what purpose was Mrs. Sinclair to sell and convey the fee ?

What was she to do with the proceeds ?

If, by force of the words following the express devise for life, Mrs. Sinclair could sell the fee and put the proceeds in her pocket, then clearly the intention of the testator would be defeated :

A power to sell and convey land must contain operative words.

No such words can be found in this will, either in connection with the life estate or elsewhere.

Noticeable, and, of itself demonstrative of the ignorance of the man who prepared the will, is the fact that, in that

part of the will where it begins by devising the fee absolutely, the draughtsman was not satisfied with general terms, but, to "make assurance doubly sure," he employs generic terms, and then closes in the sweeping clause, "*with* "*everything that I possess.*"

Again—in limiting the devise to life and full enjoyment, he is not satisfied with the general words, "*To have and* "*to hold during her life.*" But, lest there should be any doubt in regard to her rights as tenant for life, he adds—

"*And to do with as she sees proper* BEFORE HER DEATH."

If Robert Sinclair had intended to give his wife power to sell or dispose of the property, and divest his heirs of the fee, why did he limit the first part of the devise? If his intention was to give his wife power to sell the fee, why did he not say so in express terms? Having changed his *will* from a devise in fee to an estate for life, what reason would he have to enlarge the life estate to a fee, by empowering the life tenant to sell the fee, defeat the heirs, and do as she saw proper with the proceeds before her death? If such were his intention, why did he change the devise in fee to a life estate? Such a construction as this, is not only against nature and contrary to reason, but it is contrary to all authority.

In the leading case of *Bradley* v. *Westcott*, 13 Vesey, Jr. 450. The Master of the Rolls, *Sir William Grant*, than whom few greater or more profound jurists are known to history, had occasion to consider and pass upon a case so strikingly analogous to the case before the Court that we beg leave to place the words of the devise in that case in juxtaposition with the words of the devise in the case on hearing.

part of the will where it begins by devising the fee absolutely, the draughtsman was not satisfied with general terms, but, to "make assurance doubly sure," he employs generic terms, and then closes in the sweeping clause, "*with* "*everything that I possess.*"

Again—in limiting the devise to life and full enjoyment, he is not satisfied with the general words, "*To have and* "*to hold during her life.*" But, lest there should be any doubt in regard to her rights as tenant for life, he adds—

"*And to do with as she sees proper* BEFORE HER DEATH."

If Robert Sinclair had intended to give his wife power to sell or dispose of the property, and divest his heirs of the fee, why did he limit the first part of the devise? If his intention was to give his wife power to sell the fee, why did he not say so in express terms? Having changed his *will* from a devise in fee to an estate for life, what reason would he have to enlarge the life estate to a fee, by empowering the life tenant to sell the fee, defeat the heirs, and do as she saw proper with the proceeds before her death? If such were his intention, why did he change the devise in fee to a life estate? Such a construction as this, is not only against nature and contrary to reason, but it is contrary to all authority.

In the leading case of *Bradley* v. *Westcott*, 13 Vesey, Jr. 450. The Master of the Rolls, *Sir William Grant*, than whom few greater or more profound jurists are known to history, had occasion to consider and pass upon a case so strikingly analogous to the case before the Court that we beg leave to place the words of the devise in that case in juxtaposition with the words of the devise in the case on hearing.

Bradley v. *Westcott.*

I give, &c, "all my personal estate, "money, securities for money, goods, "chattels and effects, whatsoever and "wheresoever, and of what nature, "kind or quality soever, and all my "*estate* and interest therein, unto and "to the sole use and behoof of my "wife, Elizabeth Swarbreck, *for and* "*during her natural life, to be at her* "*full, free and absolute disposal and* "*disposition* DURING HER NATURAL "LIFE."

Case at Bar.

I give, &c., "all my estate, both "real and personal, that is to say: all "my lands, cattle, horses, sheep, "farming utensils, household and "kitchen furniture, with everything "that I possess, *to have and to hold* "*during her life, and to do with as she* "*sees proper* BEFORE HER DEATH."

In both cases there is an *express* devise *for life.* In each case the devise *for life* is followed by an ambiguous authority or direction, and in each case the authority or power is confined to *natural life.*

Never were two cases more strikingly analogous.

In *Bradley* v. *Westcott*, the devisee for life disposed by will of the property, and under that will, as in this case, under the deed of Nancy Sinclair, the property was claimed by third parties.

What were these ambiguous words afterwards thrown in? "*To be at her full, free, and absolute disposal and dis-* "*position during her natural life.*"

In passing upon the devise, and the power of the devisee under the will in the case of *Bradley* v. *Westcott*, the learned Master of the Rolls says:

"As the testator has given her *in express terms an inter-* "*est for life*, I cannot under the *ambiguous words* after- "wards thrown in, extend that interest to the abso- "lute property. *I must construe* the subsequent words "with reference to the *express* interest *for life* previously "given, that she is to have as full, free and absolute dispo- "sition as a tenant for life can have."

Let us apply this doctrine to the case before the Court, and if, as this great jurist holds, the subsequent words *must be construed* with reference to the *express interest for life*

Bradley v. *Westcott.*

I give, &c, "all my personal estate, "money, securities for money, goods, "chattels and effects, whatsoever and "wheresoever, and of what nature, "kind or quality soever, and all my "*estate* and interest therein, unto and "to the sole use and behoof of my "wife, Elizabeth Swarbreck, *for and* "*during her natural life, to be at her* "*full, free and absolute disposal and* "*disposition* DURING HER NATURAL "LIFE."

Case at Bar.

I give, &c., "all my estate, both "real and personal, that is to say: all "my lands, cattle, horses, sheep, "farming utensils, household and "kitchen furniture, with everything "that I possess, *to have and to hold* "*during her life, and to do with as she* "*sees proper* BEFORE HER DEATH."

In both cases there is an *express* devise *for life.* In each case the devise *for life* is followed by an ambiguous authority or direction, and in each case the authority or power is confined to *natural life.*

Never were two cases more strikingly analogous.

In *Bradley* v. *Westcott*, the devisee for life disposed by will of the property, and under that will, as in this case, under the deed of Nancy Sinclair, the property was claimed by third parties.

What were these ambiguous words afterwards thrown in? "*To be at her full, free, and absolute disposal and dis-* "*position during her natural life.*"

In passing upon the devise, and the power of the devisee under the will in the case of *Bradley* v. *Westcott*, the learned Master of the Rolls says:

"As the testator has given her *in express terms an inter-* "*est for life*, I cannot under the *ambiguous words* after- "wards thrown in, extend that interest to the abso- "lute property. *I must construe* the subsequent words "with reference to the *express* interest *for life* previously "given, that she is to have as full, free and absolute dispo- "sition as a tenant for life can have."

Let us apply this doctrine to the case before the Court, and if, as this great jurist holds, the subsequent words *must be construed* with reference to the *express interest for life*

previously given, and if when so construed they are to be understood to mean that the life tenant is to have as full, free, and absolute disposition as a tenant for life can have, how then can it be contended that the still less potent and greatly more ambiguous language following the *express* devise *for life* in the case before the Court, is to have a different meaning, and are to be *construed* differently?

By what rule of law, logic or reasoning are these words "*and to do with as she sees proper* BEFORE HER DEATH," following the express devise for life in the case on hearing to be construed not only as referring to the fee, but as a power to the life tenant to sell the fee, defeat the reversion, and rob the heirs of their inheritance?

Are not the words "*to be at her full, free and absolute* "*disposal and disposition* DURING HER NATURAL LIFE," employed in the devise in the case of *Bradley* v. *Westcott*, as potent and comprehensive as the words "*and to do with as* "*she sees proper* BEFORE HER DEATH" following the *express* devise *for life* in the case before the Court?

If in the one case they are to be *construed* with reference to the *life estate* and *not* with reference to the "*absolute property*," why are they not in the other to be *construed* with reference to the life estate, *and not with reference* to the *fee* vested in the heirs?

In the case of *Smith* v. *Bell*, 6 Peters 80, which was a devise in these words:

"I give to my wife Elizabeth Goodwin all my personal "estate whatsoever, and wheresoever, and of what nature, "kind and quality soever, after payment of my debts, leg- "acies and funeral expenses, which personal estate I give "and bequeath to my said wife, Elizabeth Goodwin, *to and* "*for her own use and disposal absolutely*. The remainder of "said estate after her decease to be for the use of said "Jesse Goodwin."

After the death of the said testator, the widow inter-

previously given, and if when so construed they are to be understood to mean that the life tenant is to have as full, free, and absolute disposition as a tenant for life can have, how then can it be contended that the still less potent and greatly more ambiguous language following the *express* devise *for life* in the case before the Court, is to have a different meaning, and are to be *construed* differently?

By what rule of law, logic or reasoning are these words "*and to do with as she sees proper* BEFORE HER DEATH," following the express devise for life in the case on hearing to be construed not only as referring to the fee, but as a power to the life tenant to sell the fee, defeat the reversion, and rob the heirs of their inheritance?

Are not the words "*to be at her full, free and absolute* "*disposal and disposition* DURING HER NATURAL LIFE," employed in the devise in the case of *Bradley* v. *Westcott*, as potent and comprehensive as the words "*and to do with as* "*she sees proper* BEFORE HER DEATH" following the *express* devise *for life* in the case before the Court?

If in the one case they are to be *construed* with reference to the *life estate* and *not* with reference to the "*absolute property*," why are they not in the other to be *construed* with reference to the life estate, *and not with reference* to the *fee* vested in the heirs?

In the case of *Smith* v. *Bell*, 6 Peters 80, which was a devise in these words:

"I give to my wife Elizabeth Goodwin all my personal "estate whatsoever, and wheresoever, and of what nature, "kind and quality soever, after payment of my debts, leg- "acies and funeral expenses, which personal estate I give "and bequeath to my said wife, Elizabeth Goodwin, *to and* "*for her own use and disposal absolutely*. The remainder of "said estate after her decease to be for the use of said "Jesse Goodwin."

After the death of the said testator, the widow inter-

married with one Bell, who, as her husband, reduced the identical personal property mentioned in the will to his possession. Mrs. Bell died some time afterwards. Jesse Goodwin, the son, transferred his interest in remainder to one Smith, who brought trover for the property. Bell claimed it under the will by virtue of his marriage.

In passing on the case, Mr. Chief Justice MARSHALL says:

"The first part of the clause, which gives the personal "estate to the wife, would undoubtedly, if standing alone, "give it to her absolutely.

"The difficulty is produced by the subsequent words. "They are: 'which personal estate I give and bequeath "unto my wife Elizabeth Goodwin to and for her own use "and benefit and *disposal absolutely*.'

"The operation of these words, when standing alone, "cannot be questioned. But suppose the testator had "added the words '*during her natural life*.' These words "would have restrained those which preceded them, and "have limited the use and benefit and the absolute dispo- "sal given by the prior words, *to the use and benefit and to "a disposal for the life of the wife*. (13 Ves., 444).

"The words then are susceptible of such limitation. It "may be imposed on them by other words. Even the "words '*disposal absolutely*,' may have their character "qualified by restraining words connected with and ex- "plaining them to mean *such absolute disposal as a tenant "for life may make*."

"If this would be true, provided the restraining words "*for her life* had been added, why may not other equiva- "lent words, *others which equally manifest the intent to re- "strain the estate of the wife to her life*, be allowed the "same operation?

"The words 'the remainder of said estate after her "'decease to be for the use of the said Jesse Goodwin,' "are, we think, equivalent. They manifest with equal

married with one Bell, who, as her husband, reduced the identical personal property mentioned in the will to his possession. Mrs. Bell died some time afterwards. Jesse Goodwin, the son, transferred his interest in remainder to one Smith, who brought trover for the property. Bell claimed it under the will by virtue of his marriage.

In passing on the case, Mr. Chief Justice MARSHALL says:

"The first part of the clause, which gives the personal "estate to the wife, would undoubtedly, if standing alone, "give it to her absolutely.

"The difficulty is produced by the subsequent words. "They are: 'which personal estate I give and bequeath "unto my wife Elizabeth Goodwin to and for her own use "and benefit and *disposal absolutely*.'

"The operation of these words, when standing alone, "cannot be questioned. But suppose the testator had "added the words '*during her natural life*.' These words "would have restrained those which preceded them, and "have limited the use and benefit and the absolute dispo- "sal given by the prior words, *to the use and benefit and to "a disposal for the life of the wife*. (13 Ves., 444).

"The words then are susceptible of such limitation. It "may be imposed on them by other words. Even the "words '*disposal absolutely*,' may have their character "qualified by restraining words connected with and ex- "plaining them to mean *such absolute disposal as a tenant "for life may make*."

"If this would be true, provided the restraining words "*for her life* had been added, why may not other equiva- "lent words, *others which equally manifest the intent to re- "strain the estate of the wife to her life*, be allowed the "same operation?

"The words 'the remainder of said estate after her "'decease to be for the use of the said Jesse Goodwin,' "are, we think, equivalent. They manifest with equal

"clearness the intent to limit the estate given her *to her* "*life*, and ought to have the same effect. They are to- "tally inconsistent with an estate in the wife which is to "endure *beyond her life*."

Mark the force which this great master gives to the words "*for her life*." He calls them restraining words, and says "these would have *restrained* those which pre- "ceded them, and have *limited* the use and benefit *and the* "*absolute disposal* given by the prior words to the use and "benefit, *and to a disposal for the life of the wife*."

"They are totally inconsistent with an estate in the wife "which is to endure *beyond her life*."

Are not the words "*before her death*" in the will under consideration *restraining words*, and do they not *limit* the preceding words "*and to do with as she sees proper*" to the life of the wife? Are they not totally inconsistent with an estate in the wife, which is to endure "*beyond her life?*"

In the case of *Gregory* v. *Cowgill*, 19 Mo., 415, the Court says:

SCOTT, J. "Robert Sinclair died, seized of a consider- able estate, both real and personal. By his will he de- vised to his wife, Susan, all of his estate, both real and personal, of what kind and nature soever, to have and to hold, *and to enjoy*, during her natural life time, with the exception of Eden, his black man, whom, for his fidelity, he emancipated. To his nephew, J. H. Gregory, he de- vised *all that might remain* of his estate, both real and per- sonal, after the death of his wife, to have and to hold and to enjoy forever. These clauses, with the exception of the formal parts, constituted the entire will. J. H. Gregory afterwards died, and left the plaintiff, Sarah C. Gregory, his sole heir-at-law. Susan Sinclair, after the death of her husband, intermarried with William Pritchard, and they joined in a deed conveying the tract of land in controversy to James Cowgill, the defendant, for the sum of $1,200.00. This land was one of the tracts devised by the will to Su- san Sinclair, the wife of the testator. After the death of Susan Pritchard, (formerly Sinclair), this suit was brought

by the plaintiff, the heir of the devisee in remainder, J. H. Gregory to recover possession of the land sold to James Cowgill, on the ground that the will of Robert Sinclair gave his wife only a life estate in the land conveyed by her and her husband to Cowgill, and consequently that his interest therein ceased. An express estate for life was given to Susan Sinclair. If the word, '*remain*' was even sufficient to raise a power of disposition in the devisee for life, there were words in the will enough to give it an effect without applying it to the real estate. Some of the property was of a perishable nature, and some of it would be consumed in the use; it was not therefore designed that such portions of it should be accounted for to the remainder man. The general rule is that a devise of an estate generally or indefinitely, with a power of disposition over it, carries a fee. *But where the estate is given for life only*, the devisee takes only an estate for life, though there be a power of disposition in fee by will or deed, unless the obvious general intent of the testator would otherwise be defeated. Words of *mere implication* will not convert a life estate into a fee unless the manifest general intent of the testator requires it. *Jackson* v. *Robins*, 16 John., 588; *Ide* v. *Ide*, 5 Mass., 203. Here there is no intent of the testator expressed in any way which will overturn this rule. The other judges concurring, the judgment is affirmed."

There was a judgment for the plaintiff.

The cases cited by counsel in the above case, to prove that if there was a power in the will, it was not executed, are: 4 Kent, 334, 335: 4 Vesey, 631; 1 Atkyns, 559; 3 Story Rep. 427; 3 J. C. R.; 551; 12 Modern, 470.

In the case of *Boyd et al.* v. *Strahan*, 36 Ill., 355, Mr. Justice LAWRENCE had occasion to pass upon a much stronger clause in a will. The opinion delivered by that great master is in these words:

"In the year 1859 John Strahan died, leaving a will containing the following clauses, which are all that affect the determination of this case:

"*Eighth.* I do hereby further give, devise and bequeath unto my wife, Mary V. Strahan, the sum of twelve hundred dollars in money, also my household furniture, beds and bedding, to her and to her heirs and assigns forever.

"*Ninth.* I do hereby further give and bequeath to my wife, Mary V. Strahan, the balance of all the money of my estate, in notes or otherwise, together with all my personal

property of every description, not herein enumerated or otherwise disposed of in this will, *to be at her own disposal, and for her own proper use and benefit during her natural life.*"

"Under the last clause, Mary V. Strahan received the sum of $1,855.55. She died on the 13th March, 1860, leaving a will made on the 7th March, 1860 in which, after making various devises and bequests of land, money and a few articles of household furniture, she proceeded as follows:

"*Sixteenth:* And lastly—I give, devise and bequeath to my brother, Samuel L. Boyd, and to my sister Rebecca, all the residue of my personal effects, for their use and benefit.

"The persons named in this clause are the appellants in this record. They claim the above named sum of $1,855.55 as residuary legatees of Mary V. Strahan, while the appellees, who are the heirs of John Strahan, claim by virtue of such heirship.

"It is contended by the counsel for the appellants, that inasmuch as the will of John Strahan gave to Mary V. Strahan the right *of disposal of said property during her natural life;* this right of disposal vested her with the absolute title. That, as a general rule, where a will bequeaths *personal property* to be at the absolute disposition of the legatee, he becomes, in the absence of all clauses showing a contrary intent on the part of the testator, the absolute owner, will be readily conceded. The question still recurs, what was the intent of the testator in the will before us? Did he design to do anything more than to give the use and enjoyment of his residuary property during the natural life of his wife?

"*The familiar rule which controls all others in the interpretation of wills is, that the intention of the testator, to be gathered from the entire will, must govern.* There is no other class of written instruments known to the law, in which so little importance is to be attached to the technical sense of language, in comparison with that sense in which the apparent object of the writer indicates his words to have been used. So far is this principle carried, that the Court say, in 3 Wills, 141, '*Cases on wills may guide us to general rules of construction; but unless a case cited be, in every respect, directly in point, and agree in every circumstance, it will have little or no weight with the Court, who always look upon the intention of the testator as the Polar star to direct them in the construction of wills.*'

This language is quoted approvingly by Chief Justice MARSHALL in *Smith* v. *Bell*, 6 Pet., 80.

"Now, when in the case before us, we compare the eighth and ninth clauses of the will of John Strahan, there can be no reasonable doubt but that he intended by the last clause to give his wife only a life estate in the property therein described. By the eighth clause he gives to her twelve hundred dollars in money, and his household furniture, 'to her and to her heirs and assigns forever.' By the very next sentence he gives to her his residuary personal estate, 'to be at her own disposal, and for her own proper use and benefit during her natural life.' No unprejudiced person can read these clauses and remember that one immediately follows the other in the will, without coming to the conclusion that the testator meant to create a different estate in the last clause from that which he had created in the preceding. Else, why the studied difference of expression? Else, why insert this clause in the will at all? For if it gives the ownership of the property, the same object would have been much more easily and surely obtained by inserting in the eighth clause, after the word 'bedding,' the words used in the last clause, 'all my personal property of every description, not herein enumerated or otherwise disposed of in this will.' We must suppose the testator to have used language with ordinary intelligence; and if he did so, he clearly did not adopt these different and even antagonistic modes of expression in direct juxtaposition with each other, without intending a difference of meaning. Both clauses must be so construed as to give to each its natural and appropriate meaning, and, to do this, we are obliged to say that the first gave the legatee the absolute ownership in certain personal property, and the next gave to her, in certain other personal property, an estate for life.

"The case of *Bradley* v. *Westcott*, 13 Vesey, 450, is strikingly like the one at bar, though a stronger case. There the testator gave his personal property 'to the sole use and behoof of his wife for and during the term of her natural life, *to be at her full, free and absolute disposal and disposition during her natural life, without being in anywise liable to be called to any account concerning the amount, value or particulars thereof, by any person whomsoever.*' The testator further authorized his wife to dispose, by will, of certain portions of the personal property, and of five hundred pounds in money. The question before the Court was whether, under this will, the widow took the

absolute property, or only the life estate. The Master of the Rolls said: 'As the testator has given her, in express terms, an interest for life, I cannot, under the ambiguous words afterwards thrown in, extend that interest to the absolute property. I must construe the subsequent words with reference to the express interest for life previously given; that she is to have as full, free and absolute disposition as a tenant for life can have.' The words of the will in this case were much stronger in favor of the claim of absolute ownership in the legatee, than in the will we are now construing. The property bequeathed was to be at her 'full, free and absolute disposal,' during her natural life. Yet the Court held that she only had an estate for life, and could only make such disposition as a tenant for life could make.

"In *Smith* v. *Bell*, 6 Pet., 72, there was a bequest of all personal property to the wife absolutely, and then a provision that the remainder, after her decease, should be for the use of his son. The Court held that the last clause qualified the first, and showed the intent of the testator that the widow should take only a life estate. Chief Justice MARSHALL, in giving the opinion of the Court, uses the following language:

"'The first part of the clause, which gives the personal estate to the wife, would undoubtedly, if standing alone, give it to her absolutely. But all the cases admit that a remainder, limited on such a bequest, would be valid, and that the wife would take only for life. The difficulty is produced by the subsequent words. They are, 'which personal estates I give and bequeath unto my wife, Elizabeth Goodwin, to and for her own use and benefit and disposal absolutely.' The operation of these words, when standing alone, cannot be questioned. But suppose the testator had added the words 'during her natural life.' These words would have restrained those which preceded them, and have limited the use and benefit and the absolute disposal given by the prior words, to the use and benefit, and to a disposal for the life of the wife. (13 Ves., 444.) The words, then, are susceptible of such limitation. It may be imposed on them by other words. Even the words 'disposal absolutely' may have their character qualified by restraining words, connected with, and explaining them to mean, such absolute disposal as a tenant for life may make.

"The learned Judge then proceeds to show that the devise of a remainder to the son is to be considered as

meaning what the words 'during her natural life' would have meant if they had been added to the bequest to the wife.

"Interpreted by the principles laid down in these cases, the will before us is free from difficulty. On these authorities there would be no doubt, even if the question turned on the ninth clause alone. The words in that clause, 'during her natural life,' would so qualify the power of disposal as to make it mean such disposal as a tenant for life could make. This is the natural import of the language, and when to this is added the light shed upon the will by the eighth clause, all difficulty is removed.

"We have carefully examined the various cases cited by the appellant. As is true of most cases depending upon the construction of wills, they chiefly turn upon facts peculiar to each case, and there is not one of them in which the analogy to the present case is not far more remote than between this case and those above cited.

"In the view we have taken, it is unnecessary to consider the other point made by the counsel of appellant upon the construction of Mrs. Strahan's will. If she had only a life estate, and only the power of such disposition as a tenant for life could make, she had, of course, no power to appoint by will."

Again, in the case of *Siegwald* v. *Siegwald*, 37 Ill., 431, Chief Justice WALKER, one of the very ablest real estate lawyers in the Republic, upon a bill filed by the reversioner to restrain the sale of the fee by the life tenant where the will gave the life tenant the fee absolute in express terms, thus delivered the opinion of the Court:

"The bill in this case was filed for the purpose of restraining plaintiff in error from selling certain real estate described in the will. The whole controversy arises on the construction of the last will of David Siegwald, from whom both parties claim title. The clause of the will under which the question in dispute arises, is this: 'I 'give and bequeath to my beloved wife, *Antonia, all my 'real and personal estate, wheresoever situated, in fee sim-'ple absolute forever;* that is to say, that my said wife 'shall have all the benefits thereof, until the expiration of 'her life, at which time, my son, Anton, shall be the only 'heir of real or personal estate what may be left.' He then appoints his wife executrix of the will. The bill

absolute property, or only the life estate. The Master of the Rolls said: 'As the testator has given her, in express terms, an interest for life, I cannot, under the ambiguous words afterwards thrown in, extend that interest to the absolute property. I must construe the subsequent words with reference to the express interest for life previously given; that she is to have as full, free and absolute disposition as a tenant for life can have.' The words of the will in this case were much stronger in favor of the claim of absolute ownership in the legatee, than in the will we are now construing. The property bequeathed was to be at her 'full, free and absolute disposal,' during her natural life. Yet the Court held that she only had an estate for life, and could only make such disposition as a tenant for life could make.

"In *Smith* v. *Bell*, 6 Pet., 72, there was a bequest of all personal property to the wife absolutely, and then a provision that the remainder, after her decease, should be for the use of his son. The Court held that the last clause qualified the first, and showed the intent of the testator that the widow should take only a life estate. Chief Justice MARSHALL, in giving the opinion of the Court, uses the following language:

"'The first part of the clause, which gives the personal estate to the wife, would undoubtedly, if standing alone, give it to her absolutely. But all the cases admit that a remainder, limited on such a bequest, would be valid, and that the wife would take only for life. The difficulty is produced by the subsequent words. They are, 'which personal estates I give and bequeath unto my wife, Elizabeth Goodwin, to and for her own use and benefit and disposal absolutely.' The operation of these words, when standing alone, cannot be questioned. But suppose the testator had added the words 'during her natural life.' These words would have restrained those which preceded them, and have limited the use and benefit and the absolute disposal given by the prior words, to the use and benefit, and to a disposal for the life of the wife. (13 Ves., 444.) The words, then, are susceptible of such limitation. It may be imposed on them by other words. Even the words 'disposal absolutely' may have their character qualified by restraining words, connected with, and explaining them to mean, such absolute disposal as a tenant for life may make.

"The learned Judge then proceeds to show that the devise of a remainder to the son is to be considered as

meaning what the words 'during her natural life' would have meant if they had been added to the bequest to the wife.

"Interpreted by the principles laid down in these cases, the will before us is free from difficulty. On these authorities there would be no doubt, even if the question turned on the ninth clause alone. The words in that clause, 'during her natural life,' would so qualify the power of disposal as to make it mean such disposal as a tenant for life could make. This is the natural import of the language, and when to this is added the light shed upon the will by the eighth clause, all difficulty is removed.

"We have carefully examined the various cases cited by the appellant. As is true of most cases depending upon the construction of wills, they chiefly turn upon facts peculiar to each case, and there is not one of them in which the analogy to the present case is not far more remote than between this case and those above cited.

"In the view we have taken, it is unnecessary to consider the other point made by the counsel of appellant upon the construction of Mrs. Strahan's will. If she had only a life estate, and only the power of such disposition as a tenant for life could make, she had, of course, no power to appoint by will."

Again, in the case of *Siegwald* v. *Siegwald*, 37 Ill., 431, Chief Justice WALKER, one of the very ablest real estate lawyers in the Republic, upon a bill filed by the reversioner to restrain the sale of the fee by the life tenant where the will gave the life tenant the fee absolute in express terms, thus delivered the opinion of the Court :

"The bill in this case was filed for the purpose of restraining plaintiff in error from selling certain real estate described in the will. The whole controversy arises on the construction of the last will of David Siegwald, from whom both parties claim title. The clause of the will under which the question in dispute arises, is this : 'I 'give and bequeath to my beloved wife, *Antonia, all my 'real and personal estate, wheresoever situated, in fee sim-'ple absolute forever;* that is to say, that my said wife 'shall have all the benefits thereof, until the expiration of 'her life, at which time, my son, Anton, shall be the only 'heir of real or personal estate what may be left.' He then appoints his wife executrix of the will. The bill

alleges that the will was proved and duly admitted to record in the proper office, and that letters testamentary were duly granted by the Probate Court.

"It also is alleged in the bill that plaintiff in error was about to sell the real estate, and to convey the same in fee simple absolute. That the property proposed to be sold was worth near thirteen thousand dollars, and was incumbered by the testator in his life-time to the amount of about three thousand dollars, which still continued on the premises, and that one of the objects of the sale was to pay the incumbrance. *Complainant insists that by the terms of the will defendant has only a life estate in the premises, and that the fee simple estate is vested in him, subject only to her life estate.* The bill prays an injunction to restrain the sale of the premises. To this bill a demurrer was filed, and on the hearing it was overruled, and an injunction decreed restraining plaintiff in error from selling the property; to reverse which, this writ of error is prosecuted.

"Had the demise contained no language designed to operate as a limitation, the will would have been free from all difficulty. The first clause, unaffected by the words of limitation, unquestionably vested a fee simple absolute, and plaintiff in error insists that they are repugnant to the devise, and are, therefore, inoperative, and leaves an estate in fee in the devisee and not a life estate. Wills, like all other instruments, must be so construed as to effectuate the intention of the testator, and that intention must be ascertained from the language employed in the instrument itself. And in arriving at the intention, all of the language employed must be considered. It seems to be evident that the testator did not intend to devise to his widow a fee simple absolute; otherwise he would not have added the limiting clause. Had that been the intention, he had fully accomplished the purpose without employing the latter clause; but when he did so, it must have been to limit or qualify the estate already devised.

"By the limiting clause, the testator declares that she shall only have the benefit of the estate until her death. This would seem to manifest the intention only to devise a life estate, as all would have admitted, had he not in the previous clause declared that she should take 'in fee simple absolute forever.' It may be that he designed to devise to her a contingent fee depending upon the survivorship of herself and the son. That, in the event of the death of the son, she, surviving him, should have the fee,

but, in case of her death before that of the son, he would take the fee; and until that was determined, that she should use and enjoy the benefit of all the property. *And it is altogether probable that this language, that the son should be the heir to what might be left at her death, had the devise not embraced goods and chattels, would have been different. Had it related to land alone, different language would probably have been employed.*

"We are, however, of the opinion that the design was to give the widow simply a life estate in the property in remainder over to the son. *But the personal property being perishable in its nature, and generally of that character that it must be used or consumed to be enjoyed, he only provided that the son should take such portion as remained at her death.* Hence the language employed in the will. We think that this is the most reasonable construction that can be applied to the whole clause when considered together. To adopt the construction contended for by the plaintiff in error, we must reject the whole of the qualifying words of the devise, and this we are not at liberty to do, unless, when considered, the provision is repugnant to the law, and contravenes its rules or policy. Then does this devise, limited as a life estate to the widow, in remainder to the son, contravene any rule of law, as it clearly does not its policy? We are referred by the plaintiff in error to the case of *Jackson* v. *DeLancy*, 13 Johns., 537, as an authority which supports the position that she took a fee simple estate, notwithstanding the limitation over. The Court there said there was no disability on the part of Lady Sterling, as she owned the whole estate in fee. The devise to her, was of 'all the real and personal estate whatsoever,' &c., and the Court say that the word *estate* carried a fee, and the further provision in the will, that if she died 'without giving, devising, selling or assigning it,' etc., the estate should go to his daughter, Catherine Duer, was not a good limitation by way of executory devise, as such a limitation was repugnant to the power to sell, and consequently void. The case of *Jackson* v. *Bull*, 10 Johns., 19, is referred to in support of the opinion of the Court, which announces the same rule.

"It will be observed, that in these cases, an express power to sell is given, or language employed from which the law implied the power. In the first case referred to, the limitation is upon the condition that the first taker should not give, devise, sell or assign the property

during her life. In the latter, the property was devised to the son, his heirs and assigns. The case of *Ide* v. *Ide*, 5 Mass., 500, was a devise to a son of the testator in fee, with devise over in case the devisee should die without issue. The Court there held that the limitation was repugnant to the devise, and that an absolute estate vested in the first devisee, which was not divested by his dying without issue; considerable stress is placed upon the fact that the devise over, was of whatever estate he might have at his death without lawful heirs, from which the Court inferred that it was the intention of the testator to give full power to dispose of the property, which he did in his life-time.

"In the case at bar, however, the testator not only makes an executory devise of the estate at the death of his wife, to his son, but he expressly limits the enjoyment of the property to her benefit until the termination of her life. Had this been a deed, there can be no question that the limitation would have been void, as repugnant to the fee previously granted. But the entire clause is contained in one sentence, and he nowhere, it seems, gives power to sell the property. It is true that he gives to his son, after the death of his wife, what may be left of the real and personal property. *But he no doubt knew that the personal property would not remain until the period arrived when the limitation over should take effect.*

"Again, it is a plain and primary rule that a fee cannot be limited upon a fee, by deed, but may by an executory devise. And when it appears that such was the testator's intention, it is the duty of the Courts to give it operation. And that such was the testator's intention in this case, we are no doubt fully warranted in holding, as it does appear that he only intended to devise to his wife a life estate, or the use of the property until her death, and then in fee to the son.

"The decree of the Court below is therefore affirmed."

Cox et al. v. *Butt et al.*, 22 Arkansas, 568.

These cases, so strikingly analogous to, but so much stronger than the case at bar, must settle the question as to what estate Nancy Sinclair took, and what power she had under the will.

Having shown that Nancy Sinclair had only a life estate in the land, and that she had no power or authority to

defeat the reversion or dispose of the *fee*, and that in fact she never did dispose or attempt to dispose of the fee, but on the contrary, that she carefully limited her grant to the particular estate that she took under the will, and having also shown that Nancy Sinclair died before this suit was commenced, and that by force of law, her right of *user for life* reverted to the heirs of Robert Sinclair, and their assigns, we pass to the consideration of the second proposition.

II.

THE COMPLAINANT IS IN NO MANNER OR WAY ESTOPPED BY REASON OF THE FORECLOSURE PROCEEDING, OR BY THE SALE THEREUNDER.

Estoppels are of three kinds—

Record.

Deed.

PAIS.

Estoppel by record, or *res adjudicata*, is so well understood by courts, that to define it would be a piece of egotism.

In this case, it will not be pretended that there is an estoppel by record.

Estoppel by deed, is not claimed.

Estoppel *in pais:*

This, if any, is the character of estoppel on which the appellee relies.

An estoppel *in pais* may be thus defined:

Where a party having knowledge of *latent facts*, deals with another who has not, and cannot by ordinary diligence have such knowledge. Then if the party dealt with, or induced to deal, is *damaged* by relying upon statements made, or induced to be made by the party with whom he deals, and who is possessed of the knowl-

edge of such *latent* facts, it is a rule of equity that the party having the knowledge and making, or causing the inducements to be made, shall not and will not be permitted to deny or take advantage of his own statements, or those made by his procurement.

The reason of the rule is obvious—no one will be permitted to take advantage of his own fraud.

Does the foreclosure proceeding bring the complainant within this rule? Whether it does or not, is a question of fact, to be determined from the record and extraneous evidence.

What are the facts? Nancy Sinclair, having a life estate in the premises, on the 20th day of July, 1839, made a conveyance to the Union Potomac Company, in these words: "*All that tract or parcel of land on which the "said Nancy Sinclair now resides, being the same which "was conveyed to the said Nancy by the last will and testa-"ment of her late husband, Robert Sinclair.*"

On the making and delivery of this deed, Mrs. Nancy Sinclair received back from the Union Potomac Company a bond, conditioned for the payment of the purchase price of the estate sold, and a mortgage to secure the same. The grant in that mortgage is in these words: "*All that "tract or parcel of land lying and being in the County of "Hampshire aforesaid, which was on the 20th day of July, "1839, conveyed, by deed of bargain and sale, bythe said "Nancy Sinclair to the said Union Potomac Company.*"

It is a well settled rule of law, that no one can grant or convey a greater title than he has.

Another rule, equally well settled is, that every one is bound to know his own title, and the source through which it i derived.

In view of these rules of law, and the conveyance made by Nancy Sinclair to the Union Potomac Company, and the mortgage of the Union Potomac Company to Nancy

Sinclair, through whom the Virginia Coal and Iron Company claims title,—the question is presented, what title did Nancy Sinclair convey?

The answer to this question must depend on what title Nancy Sinclair took under the will of her husband, because such is the title she conveyed.

The estate granted by the deed, is "*all that tract or* "*parcel of land* on which the said Nancy Sinclair now re- "sides, *being the same which was conveyed* to the said "Nancy by the last will and testament of her late husband, "Robert Sinclair."

There is no pretense of the exercise of any power in this conveyance; on the contrary, this grant negatives the idea of the existence of a power. It is a grant in specific terms of, as well as by reference to, the exact *estate* conveyed to her by the last will and testament of her husband. It cannot be said that she granted, or pretended to grant, the *fee*, because she makes special reference to the will, not only as her source of title, but as to the quantity, nature and extent of her interest.

Every *interest* in lands is an *estate;* "*Estate* signifies "such inheritance, freehold, term of years, tenancy by stat- "ute merchant, staple, elegit, or the like, as any man hath "in lands or tenements."

Coke Litt., § 345, 650 w.

What estate did Robert Sinclair convey to Nancy Sinclair by his last will and testament?

Let the will answer:

"All my estate, both real and personal; that is to say, all my lands, cattle, horses, sheep, farming utensils, household and kitchen furniture, with everything that I possess —*to have and to hold during her life.*"

According to the most technical meaning of the term Estate, we have here the degree, quantity, nature and extent of the interest or estate which Robert Sinclair gave

to his wife in his property, by his will. There can be no mistaking the character of the *estate* conveyed to her by this will. It is a *life estate*—no more, no less—and such is the exact estate to which *she* in express terms refers and limits her *grant*.

She does not convey generaliy. She does not convey, or pretend to convey, under or by force of a power. She in no way refers to a power. She conveys *her own estate* in the land, and no other, and that there should be no doubt as to what *her estate* was, she refers to the will as her source of title, and as evidence of the extent, quantity and nature of her *interest*. In conveying *her own* estate, she does not undertake, or attempt, or pretend to convey the estate of the heirs.

On the 24th day of August, 1854, The Union Potomac Company having failed to pay the *bond*, Nancy Sinclair sold, assigned, and transferred *it*, and the mortgage securing it, to the complainant, Daniel R. Brant and Hector Sinclair, in consideration of their undertaking to pay her one hundred dollars a year during her life.

On the second day of July, 1857, the appellant, Brant, and his co-obligor, to enforce payment of the bond and interest, commenced the foreclosure suit in Hampshire county, and in their bill say :

" The prayer, therefore, of this bill is, that the said mort-
" gage may be foreclosed, *and sale of the estate purchased*
" *by the said Company be decreed*, in order to the payment
" of the said debt and interest."

In view of the incontrovertible facts that Nancy Sinclair took only a life estate under the will, and that in her deed she expressly limits her grant to the estate vested in her by the will, and that the precise estate so granted was mortgaged back to her, and that the bill to foreclose only asks for a sale of that estate, we beg leave to ask what estate the purchaser under the foreclosure took?

To this inquiry there can be only one answer:

Buying at a public sale with his eyes open, the doctrine of *caveat emptor* applied, and the purchaser was bound to take notice of what was being sold. He was bound to look into the proceedings, and not only see, but know, what was sold. Thus forewarned, he purchased, taking his chances for reimbursement in the life of Nancy Sinclair, and in the equity of redemption accorded the Union Potomac Company by the laws of Virginia. This was a valuable estate, and in view of the fact that Mrs. Sinclair lived for many years afterwards, was undoubtedly a profitable purchase.

William Pierce, a witness, says:

"I know of such a sale being made; it was made at Piedmont, Virginia, late in December, 1858; Patrick Hammill, Hector Sinclair, myself, and others that I do not know, were present at the sale. Patrick Hammill became the purchaser at the sale; I saw him bid it in. The life estate of Nancy Sinclair was sold at that sale, as I understood it. Patrick Hammill, the purchaser at the sale, so reported it. I am certain of this; and the same day, after the sale was over, I heard him tell others so, and I am confident it was so understood by others at the sale. I did hear Patrick Hammill say that the interest he purchased in said land at said sale was the life estate of Nancy Sinclair; he said it. Patrick Hammill bid in the life estate of Nancy Sinclair for Hector Sinclair; I heard him say so on the day of sale in Piedmont, Virginia." (Record, p. 74).

But Patrick Hammill had actual notice at the time of the sale that the interest sold was the mere life estate of Nancy Sinclair in the land.

Having shown, both according to law and fact, that Nancy Sinclair took only a *life estate* under her husband's will, and that, as life tenant, she conveyed that *exact estate*, and that the foreclosure proceeding asked only a sale of *that estate*, and no more, we now beg leave to ask by what rule of law, equity or right, is the complainant in this suit estopped from asserting title to so much of the fee as he acquired by purchase from the heirs.

Strange as it may seem, we understand it to be asserted that the appellant, by thus enforcing payment of his debt, in the foreclosure proceeding, and securing the money justly due him, is estopped from asserting his title in fee.

By what operation of law this novel conclusion is arrived at we are not advised.

"*As the cause is, so must the effect be.*"

This maxim, the correctness of which we never have had any reason to doubt, seems to have no force in the logic of the defense, which asserts that the purchaser under a foreclosure sale of a life estate, *ipso facto*, acquires the fee.

In the case of *Brewster* v. *Striker*, 2 Comstock, p. 20, this doctrine of *estoppel* was discussed by the *giants* of the American bar, and carefully considered by the Court of Appeals of New York.

It was an action of ejectment to recover certain real estate in the city of New York.

The following were the facts:

In 1815, John Hopper devised to his three grandchildren, Garrett H. Striker, Ann Striker, and Winifred Mott, *and their heirs forever*, all his real estate, *whatsoever* and *wheresoever* situated in the city and county of New York, to be disposed of by his executors, and the survivor of them, or the executors or administrators of such survivor, as follows, that is to say: The said real estate not to be at any time thereafter sold or alienated, but his said executors and the survivor of them, or the executors or administrators of such survivor, from time to time to lease or rent the same on such terms, and for such rents as they might deem most advantageous to his said heirs, and to pay the rents annually to his said heirs in equal proportion, and that if either of his said heirs or their children lawfully begotten, should choose to occupy any part of his said real estate, he, she, or they should have preference

over any other applicant, on paying a reasonable rent for the same.

A subsequent clause of the will was in these words:

"And in case any of my said heirs or devisees shall die "without lawful issue, then, and in such case, my will is "that the share of the one so dying shall be and enure to "to the sole use, benefit and behoof of my said grandchild-"ren, and the survivor of them, and the heirs of such sur-"vivor forever."

James Striker, John Mott, and James Bertine were appointed executors.

The testator died in 1819, seized of the real property devised, and left him surviving his wife and the three grandchildren named.

The executors proved the will, and entered upon their duties, rented, repaired, and paid taxes on the property until 1826.

Two of the grand-children, Garrett H. Striker, and Winifred Mott, had each lawful issue living. Ann Striker, the other grandchild, never married.

In November, 1820, Ann Striker applied to the New York Common Pleas for a partition of a portion of the real estate devised by the will, including the premises for which the ejectment was brought, and set forth that she was the owner *in fee*, as tenant in common of an undivided one-third part of the lands described in the petition, and that Garrett H. Striker and Winifred Mott each owned *in fee* another undivided third part, as tenants in common. Garrett H. Striker and Winifred Mott appeared, answered and admitted the facts. Commissioners were appointed to make partition. They set off to Garrett H. Striker the premises sued for, and made report, which was confirmed, and judgment of partition rendered by the court. Ann Striker and Winifred Mott released to Garrett H. Striker the premises allotted to him, which he occupied with the assent of the executors.

The executors all died before the commencement of the ejectment suit. James Bertine, the longest liver, by his will, appointed James Bertine and Rosolvent Stevens his executors, who qualified, and were still living.

On the 14th of January, 1840, Brewster recovered judgment against Garrett H. Striker. On this judgment execution issued, and under it, all the interest of Garrett H. Striker in the land was sold to Brewster, who on the 21st of February, 1844, received a sheriff's deed for the property.

Two questions were presented:

First. What estate, if any, the grandchildren took in the property.

Second. Whether Garrett H. Striker, by appearing, answering and admitting the premises in the partition suit, and subsequently occupying the portion of the property allotted to him thereunder, was *estopped*.

Daniel Lord and G. Wood, Esqs. appeared for the plaintiff in error, and E. Sanford and Charles O'Connor, Esqs. for the defendant in error.

The opinion of the Court was delivered by JONES, J.

"The questions in this case are, what estate did the grandchildren take under the will in the real estate of the testator? and what interest therein or power over the same was vested thereby in the executors? The plaintiff by his declaration claims the premises in fee. To sustain that claim, it was incumbent on him to show that the fee was vested by the will, in Striker, from whom he derived his title; and for that purpose he introduced and relied upon the *will*, and the record of the partition in the New York common pleas, between the devisees of the testator, and the release to Striker by his co-devisees; contending that by the express devise of the real estate to the three grandchildren *in fee*, and the legal effect and operation of the subsequent limitation and devise over upon it, those grandchildren took estates tail in their respective portions of the premises, which the statute converted into estates in fee simple absolute; and the first question presented to our consideration is, what estate those devisees did take,

in their respective shares of the premises devised to them. The first devising clause of the will purports to vest in them the *fee*, but the subsequent clause provides, that in case any of them should die without lawful issue, the share of the one so dying should be and enure to the others of them, &c.; the effect of which, the plaintiff contends, was to reduce the estates in fee under the first devise to estates tail; but as the defendant insists, was to limit thereon, valid contingent remainders in fee in the devisees over, by way of executory devise. The question between them is, whether the devises over, on the given contingency, are valid contingent remainders by way of executory devise to take effect on the death of the first takers without lawful issue then living; or whether the legal effect of the limitation over on such contingency, was to create, or vest, in the devisees respectively, estates tail in the premises devised to them, with remainders in fee; and that question involves the legal signification and construction of the terms "*dying without lawful issue*," as they are used in this will; whether they are to be understood and taken to refer to the death of the devisees and to mean a want or failure of issue of such devisee, living at the time of the death of such devisee; or are to be understood and taken to refer to the general failure of issue of the first taker, and to mean a failure of issue by the decease of all the descendants of said first taker, when the whole of his or her issue shall be exhausted, and become extinct. The plaintiff contends that the terms "*dying without issue*," have acquired a legal technical sense, and by the settled rules of construction mean, an indefinite failure of issue, to happen and exist when all the issue and descendants of the decedent shall be exhausted and extinct, and not till then; and that when those terms occur in a will, the testator must be taken and understood to use them in that sense, unless he, by his will, clearly expresses or indicates a different intention; and that the testator, in this case, has expressed no such intention to use them in a different sense as can control the legal signification and construction of them. The defendant, on the other hand, insists that the contingency of death without lawful issue, as expressed in this limitation, means a failure of issue at the time of the death of the devisee, so dying, and that such must have been the sense of it intended by the testator, as the devise over upon it is to the other grandchildren and to the survivor of them; and in the lifetime of which said three grandchildren the death and failure of issue in the testator's contem-

plation must happen, or the limitation over in the form directed by him could take effect.

[The learned judge here proceeded to discuss at large the above question, and stated as his conclusion upon the fullest consideration he had been able to give the whole matter, that the devise over was to the surviving grandchildren or grandchild on the death of those who should die without lawful issue then living, and must take effect in the lifetime of both or one of them; that the limitation over was valid as an executory devise; and that as the three grandchildren were still living, Striker, under whom the plaintiff claimed, had no vested estate in remainder or future estate in any part of the premises which could be sold under the judgment against him, or which could pass by a sheriff's deed to the purchaser.]

* * * * * * * *

"It was admitted that from the time of the decease of Hopper, the testator, to the time of the partition aforesaid, the defendant Striker was in the occupation of the premises in question, with the concurrence, assent and permission of the said executors and trustees of the testator; and that from and after the said partition, he occupied and possessed the portion of the premises whereof partition was made, allotted to him, including the premises in question in severalty; and it appeared, that on the death of the testator, his said executors in his will named, entered upon the execution of their duties as executors and trustees under the will, and let and rented, repaired and paid taxes upon, and controlled two lots of ground in Chatham street, in the city of New York, parcel of the devised premises, up to about the year 1826; that the said executors are all deceased; that James Striker, one of them, died in February, 1831; that Jordan Mott, another of them, died in January, 1840; and that James Bertine, the other of them, died in December, 1842; and that he left a will by which executors were appointed, who have proved the will, and qualified as executors thereof, and who are now living.

"Can these facts, or the partition and releases established by them, and the possession, claim and acts of the defendant Striker under them, bind him to the seisin in fee of the premises in question in himself, which the partition assumed to exist, or preclude him by estoppel or otherwise from setting up and insisting upon the defense he now makes to the title of the plaintiff under the judgment in evidence against him? If I am right in my conclusion, that the executors, by the provision of the will, took the

legal estate of and in the devised premises as devisees thereof by implication of law, for the purposes of the will, and the benefit of the grandchildren, a release of that legal estate in these premises from the trustees to Striker, must be shown or presumed in order to make the estoppel, if it exists, available in this action. But the plaintiff has not put himself upon those grounds. He does not base his claim and right to recover upon the defendant's possession of the premises under claim of title, as evidence of a fee in him, nor upon the partition and releases as an estoppel, or the presumption of a release from the trustees to Striker. *He introduced the will of Hopper in evidence himself, and has made it the source of his title, and the basis of his claim.* The ground he has taken and endeavors to sustain is, that the devise to the grandchildren of the fee, with a limitation over, on the death of the first taker without issue, to others, in the form expressed in the subsequent clause of this will, was, in law, a devise to each grandchild of his share in fee tail, which the statute converted into a fee simple; and that the allegations in the p;e tition of Ann Striker for partition, were consequently true and the partition valid and effectual, and the premises in question effectually allotted to and vested in the defendant Striker in severalty in fee; and were consequently bound by the judgment, and passed by the sheriff's deed to him.

"How, then, could he take the ground of estoppel, or contend that the admission of Striker in his answer to the petition of Ann Striker, of the truth of her allegations of his seisin in fee of the one-third of the devised premises, is binding upon him? That such was the tenure of such one-third part of the premises, when the documents given in evidence by him, namely, the will and the deed of release, showed the truth of the fact; and the actual tenure by which he, Striker, held the same. *But, again, the alleged admission was not of a fact, but of a conclusion of law.* The will itself, and the clauses it contains, are not, and never were, as matters of fact, in dispute; *but the construction of those clauses, and the estate and interest taken by the devisees under them, upon which the controversy turns, are questions of law.* The grandchildren, at the time of the partition, doubtless supposed the devise of the real estate to them to have the legal effect to vest in them the estate in equal shares, as tenants in common, in fee simple absolute, and on such erroneous supposition they acted in the partition they assumed to make. But could that mistake of the law be urged and used against either party, to es-

top him from afterwards claiming and asserting his rights, under the true exposition of the will? *Can the plaintiff now avail himself of such mistake by the defendant, of his true title, as an admission conclusive upon him that such mistaken title was, and is in fact his true title to the land, in face of the will, to which both refer as the source of title?* The will was before the plaintiff when he took his ground and framed his pleadings, and when he went to trial. *The partition professed to be of premises devised by the will to the petitioner and her co-devisees, and the releases expressly referred to the will as the source of the title of the parties to the undivided premises, of which the partition was made, and the plaintiff must abide by the true construction of the sense and meaning of the devises of the will, and could not and cannot claim that Striker is to be bound by his mistake of the conclusion of law*, from the facts of the devise and the words used therein, or estopped from claiming under it according to the true exposition of its meaning.

* * * * * * * *

"These trustees had no authority to release or transfer the title conferred on them to the grandchildren. They were authorized to lease or let the real estate, or any part thereof, to any of the said grandchildren, and a lease from them to Striker might have been presumed; but as respects such a lease in the absence of proof of the term demised, the presumption would be of a lease from year to year, which, of course, would be of no avail to the plaintiff. A release of the trust estate cannot be intended or deemed to exist. The judgment of the New York common pleas should be affirmed."

In the case of *Letcher* v. *Morrison*, 27 Ill., p. 209, Chief Justice CATON had occasion to consider the doctrine of estoppel, set up in the following case:

One James Duncan, being the owner of a tract of land, contracted a debt, on which he was sued. After suit, and before judgment, he conveyed the land to one Isaac Letcher, who conveyed it to one John Duncan. Notwithstanding the conveyances, the land was sold under execution, and Morrison purchased it at the sale, and filed a bill to set aside the conveyances as fraudulent. John Duncan died, and William Hadley was appointed administrator of his estate. Hadley afterwards procured, under order of

Court, a sale of the land as the property of John Duncan, to pay his debts. Morrison, being one of John Duncan's creditors, whose claim was allowed by the Probate Court, received $282.50, proceeds of such sale, and gave the following receipt therefor:

"Received, April 4, 1854, of William Hadley, administrator of the estate of John Duncan, deceased, the sum of two hundred and eighty-two dollars and fifty cents, being in full allowance of claims in the Probate Court of Madison county against said estate, with interest to date, the money being the proceeds arising from the sale of the following described tract of land: The South East quarter of section 20, town 3 North, range 8, West, sold under an order of the Circuit Court of Madison county, *as the land of said John Duncan, deceased.* GUSTAVUS KŒRNER, attorney for James L. D. Morrison."

Morrison, as owner in fee, afterwards filed a bill in chancery to set aside the several conveyances thus made, whereupon the purchaser under the administrator's sale set up the giving of the receipt, and receiving the money by Morrison as an estoppel.

The Court says: "The only remaining question is, whether the receipt given by Kœrner to the administrator, for the plaintiff, is an estoppel upon him. We do not think that even if this receipt had been given by Morrison himself, well knowing that the money had been raised by the administrator of John Duncan by the sale of this very land as the estate of John Duncan, that it would estop Morrison from setting up his claim to it. *Had Morrison induced the administrator to sell it, and induced the purchaser to buy it, as the estate of John Duncan*, then, indeed, would a Court of Chancery forever shut his mouth, so that he should never assert his claim to it, by reason of such a fraud practiced on the purchaser. But so far as this record shows, he knew nothing of this sale, at least till after it was completed, and the purchase money had passed into the hands of the administrator as a part of the assets of the estate. It thus became a part of the general fund, and had to be distributed to the creditors of the estate generally. It does not appear, even, that it was sold specially to pay this debt, and if it did, the law says to the purchaser, *caveat emptor*."

Again, in the case of *Thomas* v. *Bowman*, 29 Ill., p. 426, the Supreme Court of Illinois had occasion to consider this doctrine in the following case, to which we beg leave to refer *in extenso*.

The opinion of the court was delivered by BREESE, J., whose standing as a jurist is recognized and acknowledged throughout the Republic.

"This was an action of ejectment brought in the Lawrence Circuit Court by Bowman and Harrow against Wise, for the recovery of lot 21 in the town of Lawrenceville. At the April term, 1861, of the Circuit Court of that county, William Thomas, claiming to be the owner of the lot, was admitted defendant in place of Wise, and filed his plea—not guilty.

"A trial was had by consent, by the court, without the intervention of a jury, and a verdict found for the plaintiffs.

"The facts, as they appear from the bill of exceptions, are these: Thomas, as trustee of the Bank of Illinois, claiming an equitable title to the lot in controversy, in his right as such trustee, commenced a suit in chancery, in the Circuit Court of Lawrence County, against the heirs at law of Toussaint Dubois, deceased, and George W. Wise, who was in possession of the lot, for the purpose of effecting a partition thereof between the parties, according to their rights, as might be determined in that suit. The defendants appeared and put in their demurrer to the bill, which was sustained, and the bill dismissed. The case was then taken to this court, and at the December term, 1856, was heard *ex parte*, and the decree reversed, and a judgment for costs entered against all the defendants, and the cause remanded to the Lawrence Circuit Court for further proceedings. At the May term, 1857, of that court, the demurrer to the bill was overruled, and the defendants required to put in their answer, and the venue changed, by consent, to the county of Sangamon. At a term of the Circuit Court of that county, the defendants having failed to answer, a decree, *pro confesso*, was rendered against them, and the Court proceeding to hear the case on the bill, exhibits and testimony, found the title to the lot to be vested in Thomas, as trustee of the Bank of Illinois, and entitled to the exclusive possession thereof, and ordered that possession be surrendered to him, and the defendants enjoined and prohibited from setting up or

asserting any right, title or claim to the same, and that the defendant, Wise, pay over to complainants the rents due, and to become due, for the use of the lot and appurtenances.

"On the 20th June, 1857, an execution was issued upon this judgment of the Court, for the costs awarded Thomas therein, which was levied by the sheriff of Lawrence County, on the 25th of July, 1857, on the lot in controversy, and he sold the same in satisfaction to Thomas, Wise still being in possession. At the October term, 1858, of the Lawrence Circuit Court, Joseph G. Bowman obtained a judgment against all the defendants in the chancery suit, except Wise, upon which an execution was issued and delivered to the sheriff of Lawrence County, on the 25th of October, 1858, and Bowman claiming the right to redeem the lot from the sale to Thomas, fifteen months not having expired, paid to the sheriff the amount in bank bills, necessary to redeem the lot, and, thereupon, caused the lot to be levied upon and sold to satisfy the execution. Bowman and Harrow became the purchasers, to whom the sheriff executed a deed. The sheriff paid over to Thomas the amount of money he received from Bowman on the redemption, and received from him a receipt endorsed on the certificate of purchase, as follows:

"'LAWRENCEVILLE, Ill., 20th Dec'r, 1858. Joseph Bowman, a judgment creditor of Jesse K. Dubois, and (setting out the names of the defendants) having paid to the sheriff of Lawrence county the sum of seventy-four dollars and nineteen cents, of bank bills, for the purpose of redeeming the property herein described, from the sale stated in this certificate, the sheriff has paid me the said sum of money in bank bills.'

"On this testimony, the court decided that Bowman and Harrow were seized in fee of the lot in controversy, and rendered a judgment that the defendant, Thomas, was guilty of the trespass ejectment.

"From this decision, Thomas prayed an appeal to this court, and assigns for error the general errors, and we are to determine whether there is sufficient in the record to justify the record and judgment.

"*The appellees, to sustain the judgment, insist that Thomas, by the mere fact of selling a lot on an execution against the heirs of Dubois, admitted, thereby, their interest in it.*

"It will be remembered that the judgment for costs, in the Supreme Court, was against the heirs at law of Du-

bois and Wise, and that Wise was in the actual possession of the premises. The execution on this judgment was against Wise also, and his possessory title or right was subject to sale under it. The decree rendered by the Sangamon Circuit Court established the title out of the heirs of Dubois, and in Thomas, as trustee of the Bank of Illinois. *Consequently, on a sale of the lot on execution for costs against the heirs of Dubois and Wise, Thomas, when he purchased, bought nothing to which the heirs of Dubois had title.* His title was not derived from that sale and purchase. It existed out of them long before the sale, and in Thomas, as the Circuit Court of Sangamon County had found by its decree. Wise's possessory right, whatever it may have been, was a proper subject of sale and purchase, and to that Thomas succeeded, but derived nothing from the heirs of Dubois.

"It is insisted also, that Thomas admitted the right of Bowman to redeem, by receiving, without objection, the redemption money. We do not regard the receipt of the redemption money by Thomas, as affecting the sale to the lot. We think it can have no such effect, the more especially against one acting in a fiduciary character. His position would not allow him to make any admission to the prejudice of the trust fund and against his *cestui que trust.* (Lewin on Trusts and Trustees, 72 L. L., 437.)

"It is also insisted, that Thomas is estopped from claiming title to the lot adverse to the heirs of Dubois, by his having sold the lot as the property of Dubois on his execution, and accepting the redemption money from Bowman; and by accepting the redemption, he stands in the position of one who sees his property sold as the property of another, and makes no objection; that, by such silence, he is estopped from afterwards asserting his claim.

"An estoppel *in pais* can only be set up as a means to prevent injustice; *as a shield, not as a sword.* If the receipt of the redemption money by Thomas, influenced or caused the act of Bowman in levying on and selling these premises, and actually led him into the line of conduct he adopted, it might be said Thomas would be concluded. But the case nowhere shows that Thomas had any knowledge of the levy and sale to Bowman and Harrow, until the 20th of December, near three months after the levy. He did not investigate it; he did not stand by and see the thing done, nor was he in a position to advise or prevent the one or the other. The whole proceeding originated with, and was concluded by Bowman, and at

his risk, uninfluenced by the conduct of Thomas in any degree.

"The doctrine of estoppel cannot, we think, be successfully invoked to establish a title in the heirs of Dubois, who had no title when the property was sold on execution in favor of Thomas against them and Wise, and when Bowman caused it to be sold. The mere naked fact of the receipt of the redemption money, cannot have this effect. The case of *Morrison* v. *Letcher et al.*, 27 Ill., 214, is in point. A title cannot be created, as a general rule, in this way, nor a party divested by such an act. It may not be equitable that Thomas should retain the redemption money, but that consideration is not involved in this case.

"It is a well-settled rule in the action of ejectment, that the plaintiff must recover on the strength of his own title. He must show a legal title. Now this record shows nothiug of the kind. It does not show a derivative title from the heirs of Dubois, but does show a decree in Chancery, by which the title was declared out of them long before either of these parties had any interest in the premises. The isolated fact of the receipt of the redemption money, under the circumstances shown in this case, cannot have the potent effect of creating a title where none existed. The case of *McLagan* v. *Brown*, 11 Ill., 519, can have no application, for here was no title in the heirs of Dubois, and consequently no equity of redemption in favor of a subsequent judgment creditor.

"It is unquestionably true, that Thomas in litigating in Chancery with the heirs of Dubois and Wise, knew that his title as trustee was derived from their ancestors, and it was to have the title decreed out of them, and in him, that the bill was filed. The decree shows, most conclusively, that the heirs of Dubois, as such, have no title to the lot, it having passed from them many years before. Wise had a possessory right, subject to sale, and this right Thomas might purchase. The appellees knew, also, when Bowman obtained his judgment and execution, and had a levy and sale of the lot, that the heirs of Dubois had not a shadow of title to it, and, consequently, Bowman could get no equity of redemption to be available.

"In every light in which we can view this case, we cannot discover any principle, applicable to the facts, to justify the verdict. What a court might do, on a proper case being made, looking to the recovery of the redemption money, we cannot say. That the facts do not show a

title in fee in the appellees, to the lot in controversy, we are well satisfied, and, accordingly, reverse the judgment, and remand the cause for further proceedings not inconsistent with this opinion."

In each of these cases we have the same principle involved as contended for by the defense in the case at bar; and there, as your Honors will in the case on hearing, it was resolved, after careful consideration, that the owner in fee is not estopped, and that his title is not to be divested by endeavoring to collect and receiving payment of his just debt. In other words, it is decided in these cases that the defense made by the principal defendant in the case at bar does not contain a single element of the great equitable doctrine of estoppel. And so it must strike the mind of every one conversant with the doctrine.

Dutchess of Kingston's case.
2d Smith's Leading Cases, p. 648, and cases there cited.

The great principle underlying estoppels *in pais* is fraud, misrepresentation, concealment, or deception, on the one part; ignorance, reliance, belief and injury, on the other.

What fraud did the appellant, Brant, practice on Hammill to induce him to purchase at the foreclosure sale? None.

Hammill is not a party to this proceeding. He makes no complaint. He does not, he could not, pretend that the complainants, or either of them in the foreclosure suit, resorted to misrepresentation, concealment, or deceit, to induce him to purchase. He does not pretend that he was deceived. He purchased with his eyes wide open, and the title before him; and when he sold, he guarded himself by refusing to warrant his title.

But, above all, we beg leave to ask, how can the appellee claim any benefit of estoppel? It purchased with the record and title before it. There is no pretense that its purchase was induced by the appellant. It was bound to

know the title it took, and the source whence that title was derived. And had it taken occasion to examine the title, as the law presumes it did, it would have found :

1st. That Nancy Sinclair took only a life estate under her husband's will.

2d. That when she conveyed, she guarded and limited her grant by reference to the will of her husband, not only as the source, but as to extent and quality of her title.

3d. That the mortgage she received back covered the title she conveyed.

4th. That she did not convey, or attempt or undertake to convey the fee, or to act under any power in the will, and in fact, that what she did convey was *her own estate* in the land, and no more.

5th. That the bill to foreclose prayed only for sale of the *estate* which the Union Potomac Company purchased of her.

6th. That the doctrine of *caveat emptor* applied to Patrick Hammill, the purchaser at the foreclosure sale.

7th. That Nancy Sinclair, the life tenant, was dead.

8th. That in the record, and as a part of it, was the agreement between Nancy Sinclair and the complainant, Brant, and Hector Sinclair, wherein she says :

"*Whereas I have and own a life interest in a certain* "*tract of land on which I now reside, which interest I sold* "*and conveyed to Duff Green, as Agent for the Union* "*Potomac Company, by deed bearing date the 20th day of* "*July*, 1839, *for the sum of eleven hundred dollars.*"

And lastly, but by no means least, that the appellant, Daniel R. Brant, and Hector Sinclair and Jane Sinclair, were the owners in fee by recorded title. Notice of which all the world was bound to take.

And now, on the strength of the foregoing facts and

principles, I beg leave to put the question—the answer to which must present all the force and certainty of an *experimentum crucis* for the solution of the problem at present before the Court.

Suppose, instead of a will, or devise, that Robert Sinclair had made a life lease of the property, and that the lessee had made a conveyance by deed, but in the deed referred to the lease, as the source of his title, and to secure the consideration, took back a mortgage, and then assigned the mortgage to the grantee of seven-eighths of the fee, who, during the life of the lessee, to collect the amount so secured, foreclosed and sold the estate granted by the lessee; would it be pretended that the purchaser at such sale could, by force of his purchase, hold the property against the owners in fee, after the death of the lessee, or tenant for life? Clearly not; and surely, no lawyer, versed in his profession, and having regard for his reputation, would undertake to maintain the affirmative. In such case, it would not be pretended, in view of the authorities, that by thus enforcing the collection of his debt—in the absence of fraud—the owner in fee would lose his title, or be estopped from asserting it after the death of the life tenant. If, then, in the hypothetical case stated, the owner in fee would not be divested of his title, or estopped from asserting it, we beg leave to ask, by what rule of logic, law or equity, is he, in the absence of fraud or deception, divested of his title, or estopped from asserting it, in the case before this Court?

As an answer to this inquiry, and to the pretended estoppel set up by the appellee, we beg to refer again to the case of *Brewsten* v. *Striker*, p. 41, where Judge Jones, with great nicety and clearness, draws the distinction between an admission of a fact, and a conclusion of law.

"*But, again, the alleged admission was not of a fact, but of a conclusion of law.* The will itself, and the clauses it contains, are not, and never were, as matters of fact, in dispute; *but the construction of those clauses, and the estate and interest taken by the devisees under them, upon which the controversy turns, are questions of law.* The grandchildren, at the time of the partition, doubtless supposed the devise of the real estate to them to have the legal effect to vest in them the estate in equal shares, as tenants in common, in fee simple absolute, and on such erroneous supposition they acted in the partition they assumed to make. But could that mistake of the law be urged and used against either party, to estop him from afterwards claiming and asserting his rights, under the true exposition of the will? *Can the plaintiff now avail himself of such mistake by the defendant, of his true title, as an admission conclusive upon him that such mistaken title was, and is in fact his true title to the land, in face of the will, to which both refer as the source of title?* The will was before the plaintiff when he took his ground and framed his pleadings, and when he went to trial. *The partition professed to be of premises devised by the will to the petitioner and her co-devisees, and the releases expressly referred to the will as the source of the title of the parties to the undivided premises, of which the partition was made, and the plaintiff must abide by the true construction of the sense and meaning of the devises of the will, and could not and cannot claim that Striker is to be bound by his mistake of the conclusion of law,* from the facts of the devise and the words used therein, or estopped from claiming under it according to the true exposition of its meaning."

Like causes produce like effects. Therefore, the complainant is not estopped, and not being estoppcd, is at liberty to assert his title, and have the relief he asks. The case is not like that of a purchaser who paid his money and took nothing. The defendant knew, and was bound to know, that it was taking a chance on the life of Nancy Sinclair, and, knowing that fact, it got what it purchased. To estop the complainant, in any view of the case, it was incumbent on the defense to show that the language or conduct of the complainant was the direct motive or in-

ducement to the purchase. This the defense has not even attempted.

Ware v. *Cowles*, 24 Ala., 446.
Jones v. *Cowles*, 26 " 612.
Brewer v. *Brewer*, 19 Ala., 431.
Morton v. *Hodgdon*, 32 Maine, 327.
Cambridge Inst. v. *Rittlefield*, 6 Cush., 216.
Watkins v. *Peck*, 13 New Hamp., 360.
Darlington's Appeal, 1 Harris, 430.
Carpenter v. *Stilwell*, 1 Kernan, 61.

Ignorance of the true state of the title, on the part of the purchaser, must concur with willful misrepresentation, or concealment, on the part of the vendor; and to debar the owner, the concealment must be fraudulent.

Crest v. *Jack*, 3 Watts, 238.
Hepburn v. *McDowell*, 17 S. R., 383.
Ferris v. *Coover*, 10 Cal., 509.
Casey v. *Inloes*, 1 Gil., 430.
Lawrence v. *Brown*, 1 Selden, 394.
Hill v. *Epley*, 7 Casey, 331.
Goodson v. *Beacham*, 24 Geo., 150.
Parker v. *Parker*, 2 Metcalf, 421.

No estoppel will arise in the absence of actual fraud, unless the purchaser was destitute not only of the true state of the title, *but of the means of acquiring knowledge* by a recourse to the record.

Bigelow v. *Topliff*, 25 Verm., 273.
Carter v. *Champion*, 8 Conn., 554.

Having shown that Nancy Sinclair took only a life estate in the property, under the will of her husband; that neither the reversion nor the fee was devised or disposed of by the will, and therefore, that by force of law, the fee vested in the heirs of Robert Sinclair, subject to the life estate; that this child of the mountains guarded her grant

by reference to the source and extent of her title; that the complainant, in his bill to foreclose, asked only for a sale of the interest so granted; that, instead of being guilty of fraud or deception, he fully advised the purchaser of the extent and source of Mrs. Sinclair's title; that the purchaser, well knowing and fully understanding the nature and character of the title, took his chances on the life of Nancy Sinclair, and the probability of redemption by the Union Potomac Company, we most respectfully submit our right to the relief we ask, feeling confident that, in view of the inherent justice of our claim, and the legal principles that govern the case, your Honors will award our request, and annul and reverse the decree of the Circuit Court.

JNO. J. McKINNON,

Of Counsel.

Nancy Gardner
and Ann 1864

11 How - 322

Nancy Gardner
and 26 August 1864

Sept 20 1870

v 31 Bush

Bradley v Weston -

Fraud or collusion

No. 56

Blanchard

In the Supreme Court of the United States.

No. 56.

DANIEL R. BRANT, Appellant,

vs.

THE VIRGINIA COAL AND IRON COMPANY, et al., Appellees.

ARGUMENT OF E. WYATT BLANCHARD, FOR APPELLEES.

In the Supreme Court of the United States.

OCTOBER TERM, 1876.

D. R. BRANT

vs.

THE VIRGINIA COAL & IRON COMPANY.

The Counsel for the Appellee submit the following argument:

Nancy Sinclair as Devisee acquired title to the entire estate of Robert Sinclair her husband, A. D. 1831, under the terms of the following Will.

See Record, p. 2.

In 1839, she made title to the *lands* devised by Robert's Will to the Union Potomac Company, by the Deed in fee-simple on page 4 of Record, taking a Mortgage back on the same day for the security of the purchase money. (p. 5 of Record.)

In 1853, the Complainant Brant and his then associate Hector Sinclair whose interest he now represents, acquired the existing title, whatever it was, of the children and heirs-at-law of Robert Sinclair. (See Deeds, pp. 40 to 45.)

In 1854, Nancy Sinclair relinquished possession of the farm, and assigned all her interest to the Complainant and Hector Sinclair. See Record, pp. 12 & 19.

In 1857, Brant & Sinclair holding all existing interests in the land, whether based on Robert Sinclair's Will, or a supposed partial intestacy; instituted the Chancery proceedings for the sale of the farm. See Record, p. 11 for Bill, p. 14 for Decree, p. 15 for Report of sale, p. 17 for advertisement, p. 9 for deed of Robert White, Commissioner.

Under this sale the Defendant acquires title.

The Complainant assails the title of the Defendant on the ground that Nancy Sinclair had but a life estate under her husband's will: That she sold to The Union Potomac Company only the residuum of her life estate; after the reservation of a life interest in herself for agricultural purposes only; and that nothing was offered for sale or sold under the decree except that same residuum of her life estate.

The Counsel for the Appellee (the Defendant below.) for the purpose of presenting their first view of this case, will assume that the position taken by the brief of the Appellant is correct, and that Nancy Sinclair had not the power under her husband's will to make a deed to pass a fee simple title to the "Sinclair Farm."

The Appellee insists that notwithstanding this assumed defect in the original title, the Complainant is not entitled to relief; and is estopped from denying the validity of Defendant's title.

1st. As privy in estate of Nancy Sinclair under whom he claimed title in the foreclosure proceedings.

2ndlp. By his own assertions of record in those proceedings; by his non-assertion at that time of the title he now asserts; and by various acts in connection with the foreclosure sale and subsequent thereto.

Perhaps no stronger case for the application of the doctrine of equitable estoppel, short of a case of purposed fraud, could be found.

When the Complainant bought the interest of all parties claiming title to the Sinclair Farm, he paid the heirs of Robert Sinclair $645, and agreed to pay Nancy $100 per annum for the surrender of all her interest. At the time of this bargain with Nancy Sinclair, her oldest child was 54 years old, (See Deposition, Record, p. 59,) and she over seventy; while the farm yielded an annual rent to Brant after the purchase of $75. (See Deposition of Tenant, Record, p. 82)

The lands sold under the foreclosure in 1858 for $2030; thus yielding to Complainant a profit of more than 100 per cent. on his purchase of the entire title to the lands in 1853 and 1854.

When we contrast the position of the Defendant, we find that purchasing a body of coal land some four miles distant from railroad; it has been subjected to a very heavy expense for rights of way, construction of railroad, and all the varied equipment of a mining enterprise, on the faith of a title asserted by this Com-

plainant from 1857 to 1867 in the foreclosure proceedings, and never attempted to be questioned by him until 1870, after the heavy outlay of Defendant had been completed.

To the doctrine of Estoppel, whose application is here sought, it is not necessary that fraud in fact should be charged or shown. It rests on a broad principle of equity, asserted in 11th Howard, Sup. Ct. Reps., which will not permit a party to a transaction, even when made under a mistake of title, to receive the fruits of it, and afterward repudiate it. Assertions innocently made, but which do mislead others; silence as to conflicting claims, or as to facts which should have been disclosed; recitals in deeds; descriptions of title; covenants; warranties; all or any will give rise to the application of this principle, for the protection of a purchaser in the class of cases known as cases of *constructive* fraud.

"It is laid down as a principle of universal application, that when a person assents to an act, and derives and enjoys a title under it, it shall not lie in his mouth to impeach it."

2 Wash. Real Prop's, B. 3, p. 472.
11th Howard Sup. Ct. Rep., pp. 322, 325, 326.
5 Johns. Ch. Rep., 184.
5 Vesey, 690, side p.
1 Johns. Ch. Rep., 354.
12 Wallace, 358.
13 Wallace, 291.

Nor is it true that any controlling authority can be found for the application of the rule, "caveat emptor," to this class of cases. Every one of the decisions in cases like the one in 11th Howard or 12th Wallace, proceeds upon a disregard of that rule as applicable to this class of cases. A thorough examination of title would in each of the cases cited of Estoppel by deed, have saved the purchaser, and avoided the necessity for the interposition of this equitable rule for his protection.

Looking now at the first transaction for the sale of the Sinclair Farm in 1839, between Nancy Sinclair and Duff Green, President of the Union Potomac Company, what salient facts do we find?

Nancy Sinclair eight years after her husband's death, with a fresh recollection of his purposes as to his property, has an offer from Duff Green of $1100, for "the tract of land on which

Nancy Sinclair lives." "She reserves the grave yard, and the right to live on or to rent the farm during her natural life, &c."

The sum offered, amounting to ten dollars per acre is stated by the neighbors, (See Record, pp. 90, 91, 92, 78,) to have been the full value of the property in fee simple, at that time, subject to the life estate reserved.

This evidence is *uncontradicted*. It is strengthened by the general knowledge, we must all have, of the value of a mountain farm in West Virginia, thirteen years before any railroad had passed into the country.

When then Nancy Sinclair executed the deed to the Union Potomac Company, it is conclusively proven in this case, that whatever she conveyed, was to be paid for as a fee simple estate.

If the fee were not the subject-matter of purchase, what was?

The theory of the Appellant's brief requires us to believe that Duff Green agreed to pay $1100, the value of the fee, for the residuum of Nancy Sinclair's life estate, after reserving to her the use of the land for agriculture. By the deed no right was granted to the purchaser, to take a ton of coal or ore during the life of Nancy. She as life tenant, could have treated him as a trespasser. If mere life tenant, with unopened coal beds, which was the condition of the farm until 1869, she could not grant such license. In addition to this, Nancy Sinclair was about sixty years old, and no means at all of mining the coal or transporting it, then existed, or were probable for years to come.

There is no middle ground to be taken between these two views: Either the parties to the sale believed themselves to be dealing with the fee of the lands; or an experienced land operator knowingly agreed to pay the value of the fee for an interest which could never have a substantial value.

Every line and word of the deed from Nancy Sinclair, and of the mortgage back from the Union Potomac Company confirms the evidence to be found in the price. Record, pp. 4 and 5.

1st. She grants, &c., to the Union Potomac Company, "its successors and assigns;" words of limitation in fee from which a covenant of title is in itself implied.

2nd. She grants the "tract or parcel of land."

3rd. She reserves *the life estate* particularly.

4th. She reserves *in perpetuity to herself* the grave yard.

5th. She grants, "to have and to hold," *forever the said tract, &c.*

6th. She covenants "for herself and her heirs," with her grantee "its successors and assigns for further assurance."

7th. She covenants "for herself and her heirs," that she and they "the said tract," &c., "will warrant and forever defend against the claims of all persons whatsoever."

On the same day, Nancy Sinclair accepts a mortgage back from the Union Potomac Company, to secure the payment of the purchase money. This is a common mortgage in fee simple. When it was accepted by Nancy Sinclair, it was a distinct act in pais by her, recognizing the existence of a title in fee in the Union Potomac Company, and accepting it as security for the purchase money at the then value of the fee. If her bond were not secured on the fee, it was entirely without substantial security.

In the application of the doctrine of Estoppel, the question whether the acts done by the parties, are legally effectual is of course excluded. What did they mean to do? is the sole question. And it seems impossible without doing violence to the common construction of the words and acts of parties, to conclude otherwise than that Nancy Sinclair meant to part with the fee of the Sinclair Farm, for a sum then a fair price therefor.

Other circumstances disclosed by the depositions of members of the Sinclair family, tend to show that she had reason to believe de hors his will, that her husband meant to give her a very full control of his little estate, whether for her own use or that of his family. While these depositions refer to his expressed wish that his wife should have the use of his property only during her life, they speak of his desire to leave it all to her *in trust.* That if he left anything to the children, they would *squander it* – that when his wife died, they would be sure to get it. There is certainly enough in the language of the will, and in these expressions however vaguely remembered after a lapse of forty years, to justify us in believing that Nancy Sinclair in 1839, thought herself vested with a power of disposition—not perhaps for her own use, but to quote from one of the depositions as "guardian" of her late husband's property.

But is submitted that under the authorities, her opinions or purposes or unknown views must yield to the force of her solemn acts, and that for the protection of others against herself and her

privies in estate, if the purchaser believed himself to be acquiring a fee; as against her and them, his estate is a fee. Whether asserted by herself or by her assignee, a claim to the benefit of that sale to Duff Green brought with it the application of the equitable rule already cited, and applied in 11th Howard to a state of facts similar in all the main features; except that there the Court seems to concede that the case before them would have been free from all difficulty, had the deed contained such covenants as are found in the deed from Nancy Sinclair.

When Brant became the owner of the bond given by Duff Green and the equitable owner of the mortgage, he was already by purchase for one year, the owner of the title he now asserts. So far he was not liable to the operation of any estoppel. The purchase money had not been paid by Duff Green. No injury had accrued to any one calling for the protection of an estoppel. He could repudiate the deed of Nancy Sinclatr and hold the mortgage as a protection to his other and perhaps better title. He could arrange with the mortgagor by proper conveyances to annul the whole inchoate transaction, and thus remove a cloud on his other title.

But he made a change in his position when he asserted his claim to the purchase money and filed his Bill to foreclose. In that Bill he stood on his title as privy in estate of Nancy Sinclair and all equities which could have affected her, had she foreclosed, equally thereafter affected him. Under the decree in the foreclosure, time was allowed the Defendant to pay the sum due and prevent a sale. Had the money been paid into Court and accepted without further proceedings, Brant would have been estopped only in his representative character as assignee, and privy in estate of Nancy Sinclair. So by the collection of the money by a sale, he would have been estopped only in the same character. The elements of assertion of fact calculated to mislead, of suppression of fact which should have been disclosed, might have been wanting, which in this record affect him with an estoppel arising from his own acts,

In 1857, (Record, P. 10, 11,) Brant files a Bill in which he states that the Union Potomac Company "purchased of one Nancy Sinclair, a tract of valuable coal land." With the Bill, as Exhibits, were the deed and mortgage, the former showing a reservation of a life estate to Nancy Sinclair, subject to which reservation, the mortgage was of course made. The Bill

then prays a foreclosure of this mortgage, and a sale of the estate purchased by the said Company.

Pursuant to the prayer of the Bill, a decree is passed, (P. 13, 14,) for the sale of "the lands in the bill and proceedings mentioned." "The lands" are publicly advertised with notice of the existing life estate "Nancy Sinclair, who is now a very old woman, has a life interest in the land." (P. 17.)

The Commissioners report to the Court that they advertised "the lands" to be sold "subject to the life estate of Nancy Sinclair," which sale was ratified by the Court, and in due course, the money collected and paid to Brant and Hector Sinclair whose interest Brant now represents. (Record, 24, 25, 26.)

If when these foreclosure proceedings took place, Brant and Sinclair held their present opinion of the title they now assert; it was a direct attempt to defraud any purchaser at such sale. The argument that the life estate of Nancy Sinclair, was set up for sale as the subject of purchase, requires no answer, beyond a reference to the sale as advertised, and reported by the Commissioners. Brant and Sinclair had a claim on the lands amounting to over $3000, including interest. (Record, P. 27)

The sale took place in 1859, when Nancy Sinclair's eldest son was 59 years old, and she nearly 80. The farm was three or four miles from railroad. The agricultural value small, the coal deposit not extensive, and requiring a large outlay to reach; so that it is strictly true, that any life interest therein of a woman of 80 years of age, could have had no pecuniary value.

Sold as it was, her life estate reserved, would only partially depreciate the property because of her great age.

It is not intended to charge that the Complainant in this case, and in the foreclosure case, committed the fraud of conducting that proceeding with his present opinion of his own title, or with the purpose of selling the lands, receiving the proceeds, and then reclaiming them.

But the effect is the same as if he had acted with such guilty purpose. As a party actor in the foreclosure proceeding conducted by his own counsel with his co-complainant resident in the vicinity, and equally interested with himself; it does not lie in his mouth to repudiate knowledge of that record, every line of which shows that the officers of the Court did not sell the life estate of Nancy Sinclair; and did offer "the lands mentioned in the proceedings" with that life estate reserved, in such terms

that no bidder could fail to conclude that he would be the purchaser of a fee.

After the sale, and before the complete payment of the purchase money, the late war intervened, and the deed to Patrick Hamill *in fee simple*, was not made until July, 1866. (Record, P. 9.)

This Deed was made by Robert White, Commissioner, who was the counsel of Brant in the foreclosure case. Seven years had passed since the sale, the purchase money had finally been paid in full, and and without objection of any kind from Brant or his co-complainant, who had throughout the proceeding held the title they now assert, their Counsel makes the deed in fee, and takes the final payment from Hamill who testifies that he bought the lands as sold in fee, and "would not have given anything for an estate for her life in said land."

Brant's share of this last payment was drawn by him with some accrued interest in October, 1867. (Record, P. 25.)

Wm. Abernathy, the tenant on the farm, testifies (Record, P. 82,) that after the death of Mrs. Nancy Sinclair, he had never known Brant to be in possession of the Sinclair Farm. That he rented from Brant and Sinclair first—then paid rent to Hamill and the Morrisons, (the associates in the purchase at the foreclosure sale) then to The Virginia Coal Company.

By reference to the Bill in this case on P. 28 of Record, it will appear that Nancy Sinclair died in August, 1864. For two years from that time until his final payment and the execution of the deed to him, Hamill without objection from Brant or Sinclair exercised the rights of landlord over the tenant Abernathy, which they as the owners of Nancy Sinclair's life estate, had exercised until her death. Here was a distinct act of injurious concealment of their present adverse claim, confirmatory of the sale to Hamill, and directly leading him onward to his final payment in 1866.

In the same spirit, when the Defendant acquired title from Hamill and others in 1866; no attempt was made by Brand or Sinclair to interfere with their possession or to prevent their heavy outlay to reach the coal at, and in the vicinity of the Sinclair Farm. This work was not completed until the close of 1869, a period of more than three years after the purchase by the Defendant, and five years after the death of Nancy Sinclair, during which five years the successive purchasers had been permitted without objection to exercise the ordinary rights of owner-

ship by Brant and Sinclair. The price paid for the land at the foreclosure sale is an element to be considered in this second branch of the application of the doctrine of estoppel. I mean estoppel resulting from the acts of Brant himself, and not from those of his privy in estate.

Reference has been already made to the absolute want of value of any life interest of Nancy Sinclair's assumed by Complainant to have been the subject of sale, at a time when she was eighty years old and reserved the agricultural products. The Commissioners who sold,—the purchaser who bought; testify that the price paid was the full value of the fee-simple of the land at the time of sale (Record, p. 78, 86.) Two adjacent owners, Tasker and Kalbaugh, and Abernathy the occupant of Sinclair Farm, testify to the same effect (pp. 90, 91, 92.) Their opportunities of knowledge were of the best kind, as long residents in the immediate vicinity, and observers of sales. An effort is made by the Complainant and some of the Sinclair family to place an extravagant valuation on the Sinclair Farm and its coal deposit. In 1859 when sold by the Commissioners, it was still three or four miles from Railroad in a mountain country, as it had been in 1853. At each date it required the same large expenditure to reach it, and to value it by the prices of coal lands directly on a railway is inadmissible. But these witnesses in their transaction in 1853, by which Brant and Sinclair acquired the title in fee as they claim to ⅞ of the farm, valued it at but $900, receiving $645 for ⅞. Their ages, as shown by the record, and their residence in the country enabled them to judge intelligently what was a fair price. The only change of value was the greater age of the life tenant, and perhaps some general advance in remote coal lands, sufficiently well represented by Hamill's price of $2030, which he agreed to pay for the fee in 1859 when White, Commissioner, thought he sold it, and Hamill thought he bought it.

The Record may be searched in vain for any facts occurring during the foreclosure proceedings, which indicate a doubt at the time that the farm was sold in fee. Hector Sinclair gave several orders on the Commissioners for various sums to be charged to his share of the funds "arising from the sale of the lands under a decree in the above cause" (p. 20;) "due me from the proceeds of the sale of Sinclair Farm" (p. 22;) "out of my half of the proceeds of the sale of said property"; "from the proceeds of the sale of the Sinclair property." It is difficult to resist the conclusion from all the facts taken together, that at

the time of the transfer of title from the Sinclairs to Brant, and from Nancy Sinclair to Brant; the parties believed that they were transferring their interest in the mortgage held by their mother for account of the family as proceeds of a sale pursuant to her power under Robert Sinclair's will; and that the idea of the conflict between the two titles did not arise or suggest itself until years after the foreclosure. This view is confirmed by the language of a "Title Bond" (on p. 45,) as well as by parts of the confused agreement between Nancy Sinclair and Brant. Record, p. 19.

The evidence of Hector Sinclair and of Wm. Pierce, as to conversations with Hamill on the subject of a sale which took place thirteen years before their depositions can have little weight. It is flatly denied by Hamill and is inconsistent with the whole recorded proceedings relative to the sale, all of which confirm Hamill in every particular.

Upon all the facts thus detailed we submit:

1st. That Nancy Sinclair was by her sale estopped from denying the title made by her in fee, and that R. D. Brant by the collection of the purchase money, and the foreclosure became subject to the same estoppel as her privy in estate.

2ndly. That the assertions of the Bill for foreclosure, and the conduct of the proceedings, and the actions and concealments above detailed in relation to the sale to Hamill, constitute an additional bar by way of estoppel growing out of the personal action of the Complainant.

It remains to enquire whether the deed made by Nancy Sinclair in 1839, was competent to pass a title in fee simple to her grantee, according to its words and tenor.

This involves the question of the proper construction of the will of Robert Sinclair on p. 2 of Record, with reference to which question I beg to call the attention of the Court to the elaborate opinion delivered in this case in the Court below, and reported in The Chicago Legal News in the Congressional Law Library, Vol. VI, p. 290.

Referring to this opinion for a full examination of the authorities herein cited, I call attention first to a prominent characteristic of Robert Sinclair's will. With a family of a wife and eight children and a small estate, his wife is the only person in whose favor he makes any disposition. This is not done inadvertently, for his nominal bequest to each child by name is a distinct declaration that under his will they should receive nothing.

The will too is general and in the most comprehensive terms includes in his gift everything that he possessed.

"To have and to hold during her life, and to do with as she sees proper, before her death," &c.

The extent and character of the power to be exercised by Nancy Sinclair under the clause following the word "life" is one of the subjects of enquiry in this case.

Here it may be noted that in the gift the testator specifies his property: "All my lands, cattle, horses, hogs, sheep, farming utensils, household and kitchen furniture," and in giving the power it is given as to all and every item equally in the effects enumerated. It is a fair conclusion and one difficult to be avoided, that it was not his purpose to leave his wife without the power to sell the live stock and gathered crops covered by his devise; or to compel her to account for sales and conversions of farming utensils. And yet the power affects all descriptions of property devised equally, and nothing is to be found in the will to indicate any purpose on the part of Robert Sinclair to distinguish her dominion over his real estate and his personal.

The construction claimed by Complainant's Counsel requires that the words of power shall be held to be referential to the words creating the estate, so that they shall be held to read "to have and to hold during life, and to do with as she sees proper according to the powers of a life tenant." When the testator gave all to his wife to have and to hold during her life, he gave every power incident to that life estate, without the use of another word. This construction in effect rejects the words of power, and treats them as a mere repetition of a foregoing clause.

Looked at without the light of authority: Robert Sinclair, an uneducated man, with an illiterate draughtsman, might use such language "to do with as she sees proper before her death," either to vest in his wife a power of devise; or to protect her from want in her age; or to change the investment of his small property and hold the proceeds for account of his children. But it is not a natural conclusion that in his brief and succinct will be used this language as devoid of any meaning beyond the words already used in the devise of a life estate to his wife.

The construction of Complainant's Counsel rests on an intention of the testator to die intestate as to the remainder of his effects real and personal; that they might pass to his heirs at law subject to the life estate devised to his wife.

It is an established rule of construction that intention of intestacy is not to be presumed if any other construction of the language be possible; and especially in cases where the devise like this, is of the testator's entire estate.

2 Preston on Estates, 103.

A distinction is drawn by the cases and elementary writers as to the effect of words of power added to a devise. Where the devise is general with words added implying a power of disposition the devisee takes a fee.

Where an express estate for life is given with such words of power added, the devisee takes an estate for life, and the power must be exercised.

See Preston on Estates, vol. 2, p. 81, 82.
Cruise, Tit. Devise, Cap. 13, sec. 5.
Jackson *vs.* Robins, 16 Johns., 537.
Stevens *vs.* Winship, 1 Pick., 318.
Reid *vs.* Shergold, 10 Vesey, 370.
Guthrie *vs.* Guthrie, 1 Call., 7.
Shermer *vs.* Shermer's Exr. 1 Wash. Va. R, 266.
Burwell *vs.* Anderson. 3 Leigh., 355.
2 John., 392.
May *vs.* Joynes, 20 Grattan, 692.

Where an express estate for life is given with a power of disposition *added*, the power is a distinct gift; and is not limited to a disposition of the life interest but will pass the fee.

3 Lomax Dig., Top p. 317.
2 Preston, p. 81, 82.
8 Viner's Abr, p. 234-5, secs. 2, 3, 4, 9, 8, 14.

Nor is any special form of words needed to give the power of disposition of the fee to the life tenant. In the cases cited above, the words used are as untechnical as in the will of Robert Sinclair, and as easily to be construed as referential to the use of the life estate.

In the cases collected in 8 Viner's Abr. above cited, in 2 Preston, and in 2 Johns. Rep., the words

"To do therewith at pleasure."
"To use and dispose of at pleasure."
"To use and employ at pleasure."
"To dispose of and employ."
"To dispose of."

"To the discretion."

"To do with at discretion."

36 Penn., 120. "To do with as she pleases."

have all been held to give either a fee to the devisee, or an estate for life with power to dispose of the fee. It will be seen from many of these cases, that the construction has been thus given, even in cases where there was a limitation over after words of power intervening between it and a life estate. In two cases cited in 8th Viner's Abr. above, it was urged that the powers should be held to be confined to the disposal of the life estate, but otherwise determined.

See also 11th Grattan, 463, Steele *vs.* Levisay.

I think myself safe in asserting that the current of authority is unbroken; that words of power *following* a gift for life, and *uncontrolled by other parts of* the will, give either a fee or a life estate with power to dispose of the fee.

The exceptions to the operation of the general rule, are the cases relied on by Complainant's Counsel, where the words, which, if standing alone, and unlimited by some other clause, would bring the case within the general rule; have been confined to save a limitation over, or to make the will consistent.

In Smith *vs.* Bell, 6 Peters, Judge Marshall construes the words of power as applicable to the life estate alone, in order to save the limitation over to the son, also an object of the bounty of the testator.

In Bradley *vs.* Westcott, 13 Vesey, 452, the devise was to "A for life to be at her full, free and absolute disposal during her natural life," &c., with two remainders. The reasoning of the Court clearly shows that their construction of the words of power was controlled by the subsequent clauses of the will.

In 22 Arkansas, 568, and the other cases relied on by Complainant's Counsel, it will be found as I have stated, that the words of power were subject to the control of some other clause in the will, and were limited in order to effectuate some other manifest intention of the testator.

In construing Robert Sinclair's will we are unembarrassed by any controlling or limiting clauses. The power stands alone, expressed in language as fit to express the absolute dominion over property as any untechnical words could. I refer to the citations above, and a comparison of the loose language of many of the wills with that of Robert Sinclair tends to repel the conclusion

that he intended only to give her the power of sale for the duration of her estate. In many of the cases referred to the words of power are used in limiting the life estate, as "to use and dispose of during her life;" where with a limitation over to protect, the words could and would be most naturally construed as synonymous with "to have and to hold during life." Here we have not only the absence of any controlling subsequent clause, but the most distinct evidence, in the legacies of a dollar to the children, that Robert Sinclair had finished his will when he had added the power to the previously given life estate of his wife.

It is submitted that the authorities fully justify the conclusion that Nancy Sinclair took a fee under her husband's will or a life estate with power to dispose of the fee.

If she took a fee and made the deed of 1839, under the circumstances already detailed; there can be no question that a fee passed by her deed to The Union Potomac Company.

If her deed of 1839 was executed by her when a life tenant with power to sell the reversion; it was either a deed of her own interest in the lands; a deed of the reversion under her power; or it conveyed nothing.

It was not a deed of her life estate, for it passed to the grantee no privilege or right, mining or otherwise during her life; and it expressly reserved all of her life estate, that she was legally capable of granting. In the construction of deeds executed by persons who have an estate with a power added, a mere general deed of their interest will be held to affect only their own estate. But here that presumption is rebutted by the express reservation of the life estate devised, shewing that something else was the subject of the grant.

We have then to choose between the opinion that her deed conveyed, and was meant to convey nothing, and the other conclusion that it was intended to operate according to the legal effect of its words upon the reversion.

No reference to the power is needed in the deed executed by the donee of a power, provided the deed shows within itself, that it was intended to operate upon the subject-matter of the power.

2 Washburne, Book 2, Chap. 6, sec. 14.
1 Sugden, 385
4 Kent, 334.
Steele *vs.* Levisay, 11 Grattan, 454.

The character and tenor of the Deed of 1839, have been analysed in connection with the other branch of this case, and it would be useless to repeat here the reasons why I submit the conclusion, that Nancy Sinclair executed her power of sale of the reversion, if such power she had, by the deed of 1839.

E. WYATT BLANCHARD,

Counsel for the Appellee.

No 56 Chicago

IN THE

SUPREME COURT

OF THE UNITED STATES.

No. 252.

DANIEL R. BRANT,
Appellant.
—vs.—
THE VIRGINIA COAL AND IRON CO. et al.,
Appellees.
} In Chancery.

ARGUMENT

—OF—

JOHN J. McKINNON,

AND OF

GEORGE W. BRANDT,

FOR APPELLANT.

CHICAGO:
BEACH, BARNARD & Co., LEGAL PRINTERS, 98 RANDOLPH STREET.
1876.

United States Supreme Court,

No. 252.

DANIEL R. BRANT,
Appellant,
—vs.—
THE VIRGINIA COAL AND IRON CO. et al.,
Appellees.
In Chancery.

ARGUMENT.

MAY IT PLEASE THE COURT:

Having carefully read the printed argument of the learned counsel for the defendant, wherein he reiterates in substance what he said orally, I only deem it necessary in reply, to refer to two points made on the hearing.

The question, as put by one of the learned judges, for whose strength of mind and logical powers we have always entertained the highest regard, was what I had to say to the statement.

That at the foreclosure sale, the property sold for its full fee value?

And that the decree in the foreclosure proceeding

ordered a sale of the property, and that the Commissioners advertised to sell the fee?

My answer, if I apprehend the question correctly, is:

1st. *The property did not sell at the foreclosure sale for anything like its full fee value.*

Whether it did or not, is a question of fact to be determined by extraneous evidence in and out of the record.

Before referring to the evidence in support of the proposition, it may not be amiss to look at the property, its advantages and surroundings, as it then stood. The sale was made on the 24th day of December, A.D. 1858. (Rec., p. 17.)

At the time of the sale, the property was well-known to be *coal property*, and as containing about sixty acres of the "*big vein*" of coal. (Rec., p. 17.)

The Baltimore and Ohio Railroad had been finished through from Baltimore to the Ohio River, in 1852, six years before the sale took place, and afforded every facility for shipment that now exists, *except* the *outfit* of the mine. A something incident to every mine.

Surely this property was as valuable at that time as other property in the same neighborhood, similarly situated. Therefore, the best criterion to estimate its value at the time of the foreclosure sale, is the price at which other property in that neighborhood similarly situated, sold before and after this foreclosure sale.

From such criterion, we can arrive at a correct conclusion, and speak with certainty, whereas, from the *mere assertion* of individuals, who give no such data, and do not controvert or gainsay this data, or even show that they were in anywise competent to judge of value, we can arrive at nothing, *except positive uncertainty.*

On this subject of value, we have the most conclusive testimony:

DANIEL R. BRANT (Rec. pp. 66, 7, 8,) testifies:

"From 1855 to 1862, I lived in Iowa; from 1862 until last April, I lived in Chicago, Illinois; before 1855, I lived in Allgheny County, Maryland, adjoining Hampshire County, Virginia. I knew Nancy Sinclair in her lifetime. I knew her since I was a small boy, until she moved to Virginia, about 1855, I knew her personally and intimately. I was, jointly with Hector Sinclair, the owner of a bond given by the Union Potomac Company to said Nancy Sinclair.

"Q. Were you acquainted with the value of coal lands in Hampshire County, Virginia, in the years 1858 and 1859?

"A. In the vicinity of the lands in question, I was.

"Q. What was the fee simple value of the property described in the bill in this suit, in the years 1858 and 1859?

"A. All of it that contained what is known and styled the "big vein" of coal in that coal county, was worth at least $1,000 an acre, and there is at least from 50 to 60 acres of coal on this land. The tract of land was then, in 1858 and 1859, worth $60,000.

"Q. How do you arrive at your conclusions that *coal land* in the vicinity of the Sinclair land with the 'big vein' of coal in it, as you call it, was worth $1,000 an acre in 1858–9?

"A. Because but a few years previous to that time, and before I left that country, in 1855, I knew of several pieces and heard of several pieces of mountain land *in that vicinity*, and containing the 'big vein' of coal, selling for $1,000 an acre, and it didn't lose, but increased in value in the next three years.

"Q. Who sold land in that vicinity, at $1,000 per acre, and to whom was it sold?

"A. I disremember the parties that purchased. I think they were companies, but my recollection is, that what was known as the Shapless farm, the Staub farm, the Potter farm, the Kountz farm, and others in the same coal basin, and about the same distance from railroads, and containing this same vein of coal or as many acres as contained the 'big vein' of coal, sold for about $1,000 per acre. I think in some instances for a little less. I don't know that

Kountz, Staub and Shapless, sold the farms themselves. I can't answer as to who sold them. Daniel Staub and the other heirs got the money.

"Q. I asked you to state who sold, and who purchased, and who received the money for the coal lands you refer to?

"A. I can't give the names further than I have done, of either parties; my information in this respect, is upon the hearsay of the country, *except Daniel Staub himself, who* told me that he got $1,000 an acre for the coal land.

"Q. How do you know there are 60 acres of coal on the land in controversy in this suit?

"A. I derive my knowledge from what I know of the land myself, and what the heirs told me when I bought them out.

"Q. Is the coal in the land exposed?

"A. It was not at the time I purchased it. It is now. It is opened now by the men who are taking my coal.

"Q. How can you ascertain the amount of this land that contains coal?

"A. From my knowledge of the coal basin in that country, *and from having opened out the veins myself.*"

"Q. You say in 1858 and 1859, this land was worth $60,000, and is now worth from $100,000 to $500,000, why such an increase in value?

"A. From the increased demand of coal; and in 1859 we had a gold basis, and now have a currency basis, and developments of the country, and from the increased reputation of the character of this specific vein of coal in the Eastern markets."

Next we have Hector Sinclair, who being sworn, testifies as follows: (Rec., p. 73.)

"My name is Hector Sinclair; occupation farmer; age sixty years; residence Preston County, West Virginia; I know the plaintiff, Daniel R. Brant for forty years, and Jane Sinclair ever since she was born; the other defendants I do not know; I do know of such a sale being made; it came off at Piedmont, Virginia, I think, in December, 1858; Patrick Hammill, myself and others were present; Patrick Hammill became the purchaser at the sale; I have been intimately acquainted with that country for the last fifty years and I do know that for the last ten or twenty years the 'big' or fourteen foot vein of coal in the vicinity of the Sinclair land in question and in the vicinity of Piedmont, Virginia, has been considered worth $1,000 per acre, to

the best of my information; I do know that the Sinclair tract of land in question contains about sixty acres of the big or fourteen foot vein of coal, and that there is none superior to it in the vicinity of Piedmont, Virginia."

Next in order we have the testimony of William Pierce, Rec., p. 74, who swears:

"My name is William Pierce; age 37 years; occupation farming; my residence Preston Co., W. Va.; I know D. R. Brant, the plaintiff, about one year, and Jane Sinclair about sixteen years; the other defendants I do not know; I know of such a sale being made; It was made at Piedmont, Virginia, late in December, 1858; Patrick Hammill, Hector Sinclair, myself and others that I do not know were present at the sale. Patrick Hammill became the purchaser at the sale. *I saw him bid it in;* I was not as well posted on the value of such land at the time of the sale as some others might have been, *but I do know, from common report, that the big or fourteen foot vein of coal in the surrounding hill in the* vicinity of Piedmont, Virginia, between the years 1857 and 1860, was considered to be worth at least $1,000 per acre, and about the same time or previous I heard a Mr. Shaw say he had sold his big or fourteen foot vein of coal in the vicinity of Piedmont, Virginia, for about $1,000 per acre, to the best of my recollection."

These witnesses clearly and conclusively show that they had full knowledge, and were capable of judging in regard to the value of the property. They give data for what they state, and refer to actual sales that took place before and subsequent to the foreclosure sale. Is this testimony to be overthrown by such vague assertions of opinion as the following:

Patrick Hamill, Rec., p. 78, says:

"It was known at the time that the fourteen foot or big vein was on the land. The property was sold at public auction after being duly advertised by the commissioners, at the time mentioned, and I, in connection with J. and J. Morrison, being the highest bidder, became the purchaser for the sum of $2,030. *I considered* the price paid by us was the full value of the fee simple of the land at that time. The reason for my opinion is the distance the land was from the railroad and market, and the great expense it would cost to develop it."

Note the reason the witness gives for his *opinion.* After admitting that at the time of the sale he knew the property contained the thickest, greatest, and best vein of bituminous coal ever discovered in this country, and that the value of the property did not consist in the quality of the land for farming purposes, but in the coal measure it contained, he gives as a reason for his *opinion* the distance the land was from the railroad and market, and great expense it would cost to develop it. He does not contradict or controvert the testimony of Brant, Hector Sinclair, and William Pierce.

He does not gainsay the fact that before the time he purchased, other land in the vicinity, containing the same coal measure, sold at $1,000 an acre. If these lands in the vicinity of this property and similarly situated, because of the coal measures they contained, were worth and sold for $1,000 per acre, how did it happen that this land with sixty acres of this extraordinary vein of coal on it, did not sell for $19 an acre? The answer to this inquiry is found in the record. William Pierce says, (Record, p. 74): "The life estate of Nancy Sinclair was sold at that "sale. *Patrick Hamill, the purchaser at the sale, so re-* "*ported it.* I am certain of this; and the same day after "the sale was over I heard him tell others so, and I am "confident it was so understood by others at the sale. I "did hear Patrick Hamill say that the interest he pur- "chased in said land at said sale was the life estate of "Nancy Sinclair."

Hector Sinclair says: "It was distinctly understood "before and after the sale that the *life estate only* of Nancy "Sinclair was being sold; and Patrick Hamill knew that "such was the case, for in different conversations with "him and others it was always understood that Nancy "Sinclair only owned a life interest in said land in con- "troversy on this sale."

Who contradicts or controverts these witnesses?

The only other testimony we have in regard to value is that of Alexander Kaulbaugh and Geo. G. Tasker, (Record, pp. 90, 91), neither of whom were at the sale, and both of whom conclusively show that they did not then have, and have not now, any knowledge or judgment of the value of "*coal lands.*"

To the depositions of these witnesses exceptions were filed in the court below, because they show on their face that the witnesses were wholly incompetent to testify as to the value of this kind of property. (Record, p. 93.)

If Brant and Jane Sinclair, the idiot heir, are to be deprived of this property for the sole reason that Brant and Hector Sinclair, who were the owners of seven-eighths of the fee, undertook to collect a money debt due for a life interest to Nancy Sinclair, under or through whom they do not claim title, and between whom there was no *privity* of estate, then we submit that the evidence to take away this fee ought to be *positive* and not *vague* and *uncertain.*

On one hand we have the testimony of Brant, Hector Sinclair, and William Pierce, men who know whereof they speak, and give the most reliable data in support of what they say. On the other, we have the testimony of men who neither know or care what they say.

But we are not left to vague conjecture in order to determine the value of the property as it stood, and was known at the date of the sale.

There are scientific rules whereby the coal basin can, to a certainty, be estimated. A seam of coal 15 feet thick, if worked by "long wall" system, will produce for market 24,200 tons to the acre, or 1,752,000 tons for sixty acres. If we estimate this in the mine at only 10 cents a ton, whereas the usual price is 25 cents per ton, then we find

its value $175,200, and if we put it down to 5 cents a ton, then we have $87,600. To verify these figures, needs only a reference to any work on mining engineering, such as Daddow's great work on coal, iron and oil mining.

Let us look at the case as it stood at the time of the sale, and then determine, in view of all the surrounding facts, whether the fee of this property was not at that time worth at least one thousand dollars an acre for the sixty acres containing coal.

The sale took place in December, 1858. (Rec., p. 74.)

The property is situate less than 2 miles from the Baltimore and Ohio Railroad. (Rec., p. 74.)

The Baltimore and Ohio Railroad had been completed, and was running through from Baltimore to the Ohio River in 1852, six years before the sale.

All that was required to work the property and make it available was the construction of a tramway and incline plane, which are necessary incidents to all mining operations.

There was no shafting required; all that was necessary to do was to strike the vein on the side hill and then drift in.

It is said that the Virginia Coal and Iron Company spent a large sum of money in the construction of a tramway, incline plane, and mining outfit.

What does this prove, if it does not prove the great value of the mine? Men of affairs and business capacity do not expend money uselessly, and we may well assume that this company made its expenditure in view of the great value of the coal.

Situated as this property was, capable of yielding 24,200 tons to the acre, worth at least twenty cents a ton, or $4,840 an acre in the mine, with a market then, as now, for all that could be taken out, and railroad facilities close by,

who will say that at the time of the sale this property was not worth at least $1,000 per acre for the sixty acres of coal, as sworn to by Brant, Hector Sinclair and William Pierce?

Yet, in the face of these facts and this uncontradicted and uncontradictable testimony, we are asked to believe that this careful business man, Brant, who spent time and money in procuring the fee of the property from the heirs, then turned round, and in his endeavor to collect a money bond of $1,000 out of a life interest, suffered the fee to be sold for the pittance of $2,030, with only ten per cent. of the purchase money paid down—not enough to pay court cost, much less attorney fees.

This statement carries on its face its own refutation.

2d. Brant and Hector Sinclair, plaintiffs in the foreclosure suit, in their endeavor to collect the money bond, did not ask to have the fee sold, and Patrick Hammill, the purchaser at that sale, well knew, understood and publicly declared, before and at the time of the sale, and after he purchased, that all that could or would be sold, and that all that was sold, and all he purchased or took under that sale, was the life interest of Nancy Sinclair.

Now if we can establish the correctness of this proposition, then it is obvious that Mr. Hammill was not in anywise prejudiced, injured or misled—that he purchased knowingly, and got exactly what he purchased.

In support of this proposition we have, in the first place, the prayer of the bill, which specifically asks for two things, namely: " that the said mortgage may be foreclosed and " sale of the "*estate*" purchased by the said company be de- " creed, in order to the payment of the said debt and inter- " est."

So far, then, as the complainants in that proceeding are concerned and put themselves of record, they certainly do

not ask for sale of the fee, but, on the contrary, for a sale of the *estate purchased by the Union Potomac Company.*

It is a rule of equity pleading that, although, under the prayer for general relief, the complainant may claim at the hearing a particular relief, yet such relief must be consistent with the relief specifically prayed, and the case made by the bill. 1 Barbour's Chy. Prac., p. 27.

But it is suggested that the decree in that proceeding orders a sale of the fee. By reference to the decree, it will be found that this is an error. The language of the decree is (Rec., p. 14):

"That unless the defendant do, within sixty days after the date of this decree, pay to the complainant the said several arrearages of interest up to the 20th day of July, 1857, amounting in the aggregate to the sum of $1,188.00, then James D. Armstrong and Robert White, who are appointed commissioners for the purpose, shall sell to the highest bidder, before some public tavern in the town of Piedmont, *the lands in the bill and proceedings mentioned.*"

It will be noticed that instead of describing any lands, the decree orders the sale of the lands mentioned in the bill.

On referring to the bill (Rec., p. 11), we find no description of land. All that is said in the bill in that regard, is as follows (Rec., p. 11):

"Whilst this company was doing business, and shortly after its incorporation, it purchased of one Nancy Sinclair a tract of valuable coal-land on the Allegheny mountain, for the sum of one thousand one hundred dollars. Mrs. Sinclair made a deed of conveyance to said company, and it at the same time executed a mortgage, to secure the purchase-money and the accruing interest, both of which were duly admitted to record in Hampshire County. Office copies are made exhibits with this bill, marked A and B. This mortgage refers to an article of agreement, which is also made an exhibit, C. It will be seen by reference to these papers, that the said company bound itself to pay to the said Nancy Sinclair the said sum of one thousand one hundred dollars within twelve months after it should be so required, and to pay the interest annually."

Here, then, we have the decree referring to the bill for description of the mortgaged property; and the bill referring to the mortgage, and the deed of Nancy Sinclair; and when we get back to the deed, we find that the "*thing*" which Nancy Sinclair sold is described (Rec., p. 4):

"The following described tract or parcel of land on which the said Nancy Sinclair now resides, being the same which was conveyed to the said Nancy, by the last will and testament of her late husband, Robert Sinclair."

And then, on reference to the will to which the deed directs us, we find that it conveyed or devised a life estate only to Nancy Sinclair.

Thus it appears that every conveyance, and every step taken in this foreclosure proceeding, refers back, one through the other to the will, as to what estate Nancy Sinclair took thereunder, what estate she conveyed, and what estate was to be foreclosed and sold. Was not Mr. Hammill, the purchaser at a public sale, bound to take notice of these facts? Could he shut his eyes against them? They are, and at the time of the sale were, matters of record. They are the source of his title, and of the title of those who claim under him. Is not every one bound to take notice of his own title, and the source through which it is derived? and is not this especially the case when that source is a matter of record, open to all the world?

But as a matter of fact, outside of this record evidence, Mr. Hammill did know what estate Nancy Sinclair had and took under the will, what estate she conveyed, and what estate was being foreclosed.

In this regard Hector Sinclair swears as follows, Rec., p. 73:

"It was distinctly understood before and after the sale, "that the life estate only of Nancy Sinclair was being "sold, and Patrick Hamill, the purchaser, knew that such

" was the case, for in different conversations with him and " others it was always understood that Nancy Sinclair only " owned a life interest in said land in controversy in this " sale. At the time of the sale Patrick Hamill led me to " believe that *he bid in the life estate* of Nancy Sinclair for " myself and Daniel R. Brant, and then afterwards claimed " it as his own and kept it."

William Pierce, Rec., p. 74, swears, "I know of such a " sale being made; it was made at Piedmont, Virginia, " late in December, 1858, Patrick Hamill, Hector Sinclair, " myself, and others, that I do not know, were present at " the sale. Patrick Hamill became the purchaser at the " sale. I saw him bid it in. The *life estate* of Nancy Sin- " clair was sold at that sale, as I understood it. Patrick " Hamill, the purchaser, at the sale so reported it; *I am* " *certain of this*, and the same day after the sale was over " I heard him tell others so, and I am confident it was so " understood by others at the sale. *I did hear Patrick* " *Hamill* say that the interest he purchased in said lands " at said sale was the life estate of Nancy Sinclair, he said " it. Patrick Hamill bid in the life estate of Nancy Sin- " clair for Hector Sinclair. I heard him say so on the day " of sale, in Piedmont, Virginia."

Daniel R. Brant, Rec., p. 67, says:

"Mr. Hector Sinclair, so far as I know, proceeded to en- " force the collection of the bond in the Courts of Hamp- " shire Co., Va. I did not do anything in connection with " its collection at that time. Some time subsequent, while " on a collection tour through that county I accidentally met " with Mr. Patrick Hamill, and in conversation with him " in regard to the collection of sundry old claims, I men- " tioned the collection of this bond. Mr. Hamill in response " thereto, stated that he frequently saw the attorneys from " Romney, in Piedmont, and might be of service to me in " pushing them up in my collections. Mr. Hamill said it " would be desirable for me to give him a certificate, stating " that I desired him to push them up. I did so. Mr. " Hamill remarked in the same conversation, and at the

" same time, *that I must not expect to realize much out of* " *it*, that there *was nothing being sold to make it*, except " the life time interest of old Mrs. Sinclair in the lands, but " that lifetime interest would not bring much, as she was " an old woman. I think he further remarked that it was " universally remarked in that county, that she only had " a lifetime interest in the land."

Stripped of all verbiage, the case then as it stands on the record, is as follows:

Robert Sinclair, by his will gave his wife a life estate in his property. He made no disposition of the fee. On his death the fee vested in his heirs. The life tenant conveyed by deed what she took under the will and in her deed refers to the will as the source and extent of her interest. To secure the consideration she took back a money bond and mortgage. Brant and Hector Sinclair then purchased six-eighths of the fee from the heirs. They subsequently purchased the money bond and took from Nancy Sinclair, the following deed of assignment, Rec. p. 19.

" Ex. D.—*N. Sinclair to Sinclair & Brant*, (*ag't & ass't.*)

" Know all men by these presents that whereas I have and own a life-time interest in a certain tract of land on which I now reside, which interest I sold and conveyed to Duff Green, as agent for the Union Potomac Company, by deed bearing date on the 20th day of July, 1839, for the sum of eleven hundred dollars, and which sum the said Green has never yet paid, except thirty dollars of interest; and the said Green did at the same time, on the 30th day of July, 1839, make and execute to me a mortg'e upon the same property to secure the purchase-money, none of which has ever been paid ; and now inasmuch as my son, Hector Sinclair and Daniel R. Brant, *has* bought out the heirs in said estate, I therefore, by these presents, for and in consideration of the sum of one hundred dollars cash, to be paid to me by Hector Sinclair, Daniel R. Brant, at the expiration of each & ev'ry year so long as I live, and at my death the said tract or parcel of land hereby meant or mentioned, on which I now reside, containing one hundred and twenty acres, more or less, is paid for in full, the receipt of which is hereby acknowledged; yet nevertheless I retain if ever I should *knead* or desire it for my use to live in the house formerly builded and used

by Robert Sinclair, situated on the northeast corner of said farm, as long as I live, but in no event to exercise ownership or control over it except used by myself to live in; I therefore hereby sold and conveyed unto the said Daniel R. Brant & Hector Sinclair all my entire interest in said land, and likewise in said mortgage, if ever said mortgage should concern this said tract of land hereby conveyed; & further, I hereby give and deliver up to them, the said Daniel R. Brant & Hector Sinclair, free and peasible possession to the premises herein described or intended.

"Given under my hand and seal on this 24th day of August, in the year of our Lord one thousand eight hundred and fifty-four.

her
NANCY ✕ SINCLAIR. [SEAL.]
mark.

"Signed, sealed, & delivered
in the presence of—
"JOSEPH W. DAVIS."

What interest or estate did Nancy Sinclair suppose or understand she had in the property at the time she executed this assignment? What interest did Brant and Hector Sinclair understand they obtained from her? A life interest only.

On the 5th day of September, 1857, three years after becoming the owners of the bond, Brant and Sinclair, with this deed of assignment from the life tenant before them, commenced the proceeding to collect the money bond, and made this identical deed of assignment a part of the record in that proceeding, and, in their bill, prayed for a sale of the "*estate*" purchased by the Union Potomac Co. in order to the payment of the debt.

In the foreclosure proceeding to collect the bond, Patrick Hamill acted as the agent of Brant and Sinclair. (Rec. p. 78).

He says he had written authority from Brant and Sinclair to have proceedings instituted, and then, as a matter of convenience, advises us that he mislaid it and can't find

it. That he had a paper authorizing him to push up the attorneys in the matter of Brant's collections is obvious from Brant's testimony; and that, at that time, he knew that the interest which Brant was seeking to foreclose was the life estate of Nancy Sinclair, is equally obvious from the testimony of Brant. (Rec. p. 67.)

He had full, actual, positive, knowledge that the life estate only of Nancy Sinclair was to pass at the foreclosure sale, and that such was the understanding of Brant and Sinclair. With this actual, positive knowledge, Hamill became the purchaser, having publicly declared before the sale, and after it, that the life interest only of the life tenant was to be sold, and was sold, and that he purchased the life interest only.

In view of these facts, how can it be said that Brant is now estopped *in pais*.

Estoppel is the consequence of actual or constructive fraud, but there is neither actual or constructive fraud in this case, because before the sale the plaintiffs, Brant and Hector Sinclair and Hammill, the purchaser, each understood, each agreed between themselves, and each declared to people attending the sale, that the life interest only of Nancy Sinclair was to be sold, and was sold. Have our ideas of equity become so refined that the owner of a fee must lose his title, by attempting to collect a money bond, secured by a mortgage on the life interest of a third party in the fee estate, and this too where the purchaser knows, and publicly declares being sold, and that such was that the life interest only is the interest he bought?

If Hammill had no knowledge, except what appeared of record, and if he had never talked with Hector Sinclair and posted himself as to the exact interest that was to be sold, and if he had not publicly and openly declared before the sale and after he purchased, that the interest to be sold was the life estate of Nancy Sinclair, and that such

was the exact interest he purchased; then with some show of reason might it be said that the complainant in this proceeding would be estopped; then too might the case of *Van Rensselaer* v. *Kearney*, 11 How., 297, be cited as in some way applying, but the facts, the incontestible facts, take this case out of every rule laid down in that case.

If Nancy Sinclair had been the plaintiff in the foreclosure suit, and if at the same time she was the owner of the fee, or had subsequently acquired it, and afterwards undertook to assert it as against her grantee, by deed, then the rule laid down in Van Rensselaer's case, might well be cited, but such is not this case. Brant and Sinclair had made no deed. They did nothing to divest them of the fee or estop them in now asserting it.

Hector Sinclair talked the matter with Hammil before the sale, and both agreed that Nancy Sinclair had only a life estate in the property, and that such was the estate being foreclosed, and that such was the estate about to be sold; they then agreed that Hamill should purchase this life estate for Brant and Hector Sinclair, and Hamill led Hector Sinclair to believe that he would make the purchase for him and Brant, and then after the sale Hamill stated publicly that what he had purchased at the sale was the life estate of Nancy Sinclair in the land, and then like *an honest* man, "afterwards claimed it as his own and "*kept it.*" (Rec. pp. 73, 74.)

These are facts in this record that can neither be gainsaid or disproved, facts that no one has attempted to gainsay or diprove.

Will this court disregard these facts, and now permit the defendant who claims under this purchase of Hamill, and who in the last seven years has wrongfully and fraudulently taken and carried away thousands of tons of Brant's coal, to take advantage of Hamill's fraud, to divest the complainant of the fee, which he never sold, never intended

to sell, and which the purchaser knew and declared was not sold or intended to be sold?

Take the case of the present defendants, The Virginia Coal and Iron Co., it did not purchase at the foreclosure sale, it derives title under Hamill, the agent of Brant and Hector Sinclair, the man who before and after the sale publicly declared that a life estate only was to be sold, and that all he purchased was the life interest of Nancy Sinclair, in the property.

What evidences of title did this purchaser, under Hamill, have before it ?

It was bound to know that Hamill derived title under a decree of court. It was bound to know on reading the decree, that that decree referred to the bill for a description of the property; on referring to the bill, it was bound to know that the bill gave no description, but referred to the deed of Nancy Sinclair, and when it got back to the deed, that instrument referred to the will as the source and extent of Nancy Sinclair's title.

With these evidences of record before it, can it be said that there is anything in the record to mislead a purchaser, or anything that authorized any purchaser to believe that anything else than the life interest of Nancy Sinclair was foreclosed ?

To estop the complainant, in any view of the case, it was incumbent on the defense to show that the language or conduct of the complainant was the direct motive or inducement to the purchase. This the defense has not even attempted.

Ware v. *Cowles*, 24 Ala., 446.
Jones v. *Cowles*, 26 " 612.
Brewer v. *Brewer*, 19 Ala., 431.
Morton v. *Hodgdon*, 32 Maine, 327.
Cambridge Inst. v. *Rittlefield*, 6 Cush., 216.
Watkins v. *Peck*, 13 New Hamp., 360.

Darlington's Appeal, 1 Harris, 430.
Carpenter v. *Stilwell*, 1 Kernan, 61.

Ignorance of the true state of the title, on the part of the purchaser, must concur with willful misrepresentation, or concealment, on the part of the vendor; and to debar the owner, the concealment must be fraudulent.

Crest v. *Jack*, 3 Watts, 238.
Hepburn v. *McDowell*, 17 S. R., 383.
Ferris v. *Coover*, 10 Cal., 509.
Casey v. *Inloes*, 1 Gil., 430.
Lawrence v. *Brown*, 1 Selden, 394.
Hill v. *Epley*, 7 Casey, 331.
Goodson v. *Beacham*, 24 Geo., 150.
Parker v. *Parker*, 2 Metcalf, 421.

No estoppel will arise in the absence of actual fraud, unless the purchaser was destitute not only of the true state of the title, *but of the means of acquiring knowledge* by a recourse to the record.

Bigelow v. *Topliff*, 25 Verm., 273.
Carter v. *Champion*, 8 Conn., 554.

Having, as I think, fully answered the suggestions made on the hearing, and which, in my humble judgment dispose of the positions taken by the defence, I most respectfully commit the interest of my client to the justice and judgment of the Court.

JNO. J. McKINNON.

ADDITIONAL SUGGESTIONS.

Counsel for defendant, in his argument of the question of estoppel, asserts in his brief that fraud is not an element entering into equitable estoppel, and cites in support of this proposition *Van Rensselaer* v. *Kearney*, 11 Howard, 297, and like cases. These are cases of estoppels by deed, and not of estoppels *in pais*. The distinction between the two kinds of estoppels is clear and broad, and has been long and well established. Fraud is not a necessary element to an estoppel by deed. But fraud, actual or constructive, is a necessary element to an estoppel *in pais*. This distinction counsel has failed to take in his brief, but it is important, and cannot be lost sight of.

The complainant is in no sense the privy of Nancy Sinclair. Her grantees—those claiming to hold the estate she conveyed—are her privies. The defendant has the misfortune to occupy that position. The complainant claims by a title adverse to that of Nancy Sinclair, and not through her title. The cases cited by counsel show that if Nancy Sinclair had bought the title of the heirs of Robert Sinclair, she would have been estopped by her deed, if it bears the construction claimed by defendant. No authority has been cited, and it is believed none can be produced, where it is held that a party can be estopped by the deed of one holding the adverse title. Making titles to other people's property would be an easy matter, and no one need be unhappy for want of real estate, if such were the law. It is not necessary to discuss the question of estoppel by deed.

Counsel complains that D. R. Brant and Hector Sinclair only paid $645. to the heirs of Robert Sinclair for six-

eighths of the land in controversy, or at the rate of about $900. for the whole tract. As appears from the deeds of these heirs, they lived in various parts of the mountains of Virginia, and in the States of Ohio and Illinois. Visiting those various parties at their homes, and negotiating purchases from them, was an item of considerable expense, and no little difficulty at that time—A. D. 1853. Besides, the property was subject to the complications of the life estate of Nancy Sinclair. The Baltimore and Ohio Railroad was built through that region in 1852, and there was then first an outside market for coal situated as this was. When complainant and Hector Sinclair bought out these heirs, being the first year after the railroad was built, and before the mines in the vicinity of this land had been developed, no advance in prices had taken place in the land on account of the location of the railroad. How would it better defendant's position if these heirs had made complainant a present of their title? The force of the argument is not perceived. If complainant had the foresight to discern the great value of this land in the near future, it is a matter by which he and not the defendant should profit.

It is insisted that Patrick Hamill paid all the fee of the land was worth at the sale made by the commissioners. He agreed to pay $2,030. Of this sum he paid 10 per cent. down and gave his obligation to pay 23⅓ per cent. the first of the next April, 33⅓ per cent. in one year, and 33⅓ per cent. in two years. All the deferred payments were without interest. When the facts are taken into consideration, that the complainants in the foreclosure suit had to pay their lawyers' and other expenses incident to that suit; that Hamill did not pay his obligations till several years after they were due; and that these obligations were not marketable paper, as they drew no interest, it is apparent that the entire net proceeds of the sale were not equivalent to a cash payment to complainants in the foreclosure suit of more than $1,000., if so much. The admitted

facts in this case—computations of the amount of coal in this big vein alone, and putting a value on it in the mine much less than it was worth—demonstrate conclusively that the fee of the land was worth, at the time of that sale, much more than $1,000. an acre. The amount agreed to be paid by Patrick Hamill, was not more than the value of a single acre of the land.

It was stated in the oral argument for the defendant, and is repeated in the brief of counsel that the land in controversy is situated between three and four miles from the railroad, and that defendant spent about $90,000. in building a tram railroad to it. There is no evidence in the record to support either of these propositions. No witness has testified that the defendant spent so much as a cent in making a tram railroad, or any other approach to this land. The answer states that the defendant made large expenditures and built a railroad three or four miles long. This is all there is in the record to show these facts. The answer is denied by the replication, and is not evidence. As a matter of fact the land does not lie two miles from the railroad. What defendants have spent they alone know. If they rely on those facts, they should have proved them.

But conceding, for the sake of the argument, that what the answer states is true, how does it help the defendant? The complainant did not induce it to make the expenditure. It bought property sold at a judicial sale, and was bound to take notice of its grantor's title. That the doctrine of *caveat emptor* applies to judicial sales is too well settled to require citation of authority. By making this expenditure, it has been enabled to take and appropriate to its use several hundred thousand dollars worth of coal, and it is charged by the bill to be wholly insolvent.

Again, if the land in controversy was only worth $2,030., it is strange that defendant should expend $90,000. to get to it.

It is asked what was sold at the judicial sale. It is clear, from the record, what Duff Green's object was in buying Nancy Sinclair's title. In the first paper he made with her on the subject, (*Record p. 11, bottom*), he says, in terms, "*I am to have the right to mine coal*, or iron ore." His object, and that of all subsequent parties, has been the coal. Nancy Sinclair, by the terms of the will, no doubt had the right to mine coal during her life. Her grantees had the same right. Hamill might, if he chose, have taken all the coal out of this land between the time he purchased at the judicial sale and the death of Nancy Sinclair, that being a period of six years. The coal he could have taken out in that time was worth more than a hundred times what he agreed to pay at the judicial sale. Who is to blame if he did not avail himself of his opportunities?

Patrick Hamill paid, for what he purchased at the judicial sale, $2,030. at long intervals, without interest. In less than six years after Hamill purchased (*Record p. 34*), and before he had completed his payments, or got a deed from the commissioners, he sold the same title he purchased for $10,000. cash, to John F. Ehlen, and it came, by mesne conveyances, to the defendant. As evidencing his faith in the validity of his title to the fee, Hamill conveyed by quit-claim deed, and all the subsequent conveyances have been quit-claim deeds.

Hamill himself was asked (*Record, p. 77*): "Was said land any more accessible at the time you disposed of whatever title you had to it than it was at the time of the sale by Armstrong, and if so, why?" and answered, (*Record, p. 79*): "*It was not.*" Hamill got, and got in cash, for a quit-claim deed of whatever title he had to the property, it being in the same condition as when he bought, almost five times as much as he agreed to pay in the manner before stated. The succession of quit-claim deeds between Hamill and those taking his title, down to the defendant, is

wholly inconsistent with the idea that any of these parties supposed they had any title to the fee of the land. *Bona fide* transactions are seldom or never conducted in this manner. It was simply a game in which Hamill and his grantees took the chances, and it is a game in which they have so far been remarkably successful. The utter hollowness of the pretense that the price Hamill agreed to pay at the judicial sale was the value of the fee of the land, is apparent.

Counsel says that the commissioners in the foreclosure proceeding, advertised the fee of the land for sale. Suppose they did, was anybody deceived by it? Patrick Hamill well knew what was being sold. He had caused the proceedings to be instituted as the agent of D. R. Brant and Hector Sinclair. He testifies he had written authority to have the proceedings instituted. (*Record. p.* 78.) He employed the attorneys. He had in his possession the bond and mortgage, and the assignment of the same to D. R. Brant and Hector Sinclair. That assignment stated in terms, (*Record, p.* 19), that Nancy Sinclair only had a life estate in the land, and that she had conveyed that life estate to Duff Green. Hamill declared at the time of the sale, that the life estate only of Nancy Sinclair was being sold, and that he bid in that life estate for D. R. Brant and Hector Sinclair. During all this time, and for long after, complainant was more than a thousand miles from his agent Hamill, and supposed he was doing his duty, and not setting a trap to ensnare him.

Whatever the record in the foreclosure proceeding may be, Hamill procured it to be made. Whatever the advertisement was, it was prepared by the attorney employed by him. D. R. Brant never saw the record in that case, nor any part of it, and never knew what it contained till A. D. 1870, just before this suit was brought. (*Record p.* 67.) He supposed that no attempt had been made to sell

anything, but Nancy Sinclair's life interest. Can Hamill take advantage of his own wrong, and by his own fraudulent acts close the mouth of his confiding principal to speak the truth? Are his grantees in any better position? To so hold would certainly be an unheard of application of the doctrine of estoppel.

Suppose defendant when about to purchase had gone to the record of the foreclosure proceeding and looked at that alone, what would it have found? It would have found that no land was described in the bill, that copies of Nancy Sinclair's deed and the mortgage back to her were filed as parts of the bill, and those referred it directly to the will of Robert Sinclair as the source of title. It would also have found the assignment of the land and mortgage, which was "Exhibit D" of the bill (*Record p.* 19) and a part of it, and which stated that Nancy Sinclair only had a life interest in the land, and that she conveyed that life interest to Duff Green. The will would have advised them that Nancy Sinclair only took a life estate under it, and could convey no more, and the assignment would have notified them *that all parties so understood it.* It would also have found that the complainants in that case asked in terms in their bill that the *estate* conveyed by Nancy Sinclair be sold. This is what the record of that case would have shown.

It would not have found in that entire record any allusion to the fact, that either D. R. Brant or Hector Sinclair had any interest in the fee of the land. Nothing about their interest is said in the bill, nor anywhere in the record. So far as appeared from that record, the title to the fee remained in the heirs. So that it is clear that that record alone would not have induced the defendant to believe that it was getting the title of the heirs, by virtue of the foreclosure proceedings.

Suppose, again, that the defendant had not confined

itself to an examination of the record in the foreclosure suit, but had examined the records of deeds as well. It would then have found that D. R. Brant and Hector Sinclair had bought the title of six of the eight heirs of Robert Sinclair; that such title had been conveyed to them by warranty deeds, and that these deeds had been on record ever since the year 1853. This, instead of misleading the defendant, and inducing a belief that the fee of the land passed in the foreclosure proceeding, would have had directly the opposite tendency. It was record notice to the defendants, and to all persons, that the parties to those deeds supposed that Nancy Sinclair took by the will of her husband but a life estate in the land, and that the fee was in the heirs of Robert Sinclair or their grantees. Could notification of these facts be stronger, or made in a more solemn manner?

Had defendant any right to suppose that because D. R. Brant and Hector Sinclair owned six-eighths of the fee of the land, that they meant to convey that six-eighths by a chancery proceeding to foreclose a mortgage given on a life interest, in which it was not even mentioned that they owned any portion of the fee? It is absurd to suppose so. The owner of the fee of land does not come into a court of equity to get that court to make a conveyance for him to a purchaser. He cannot come into a court of equity for that purpose. Equity has no jurisdiction of any such case.

It is clear that an examination of the record in the foreclosure suit alone, could not have deceived the defendant. Neither could an examination of that record in connection with the record of deeds, have deceived it. Nothing remains, except what took place at the commissioners' sale; and if defendant had ascertained the facts about what there took place, it would have known that Patrick Hamill was employed by complainant and Hector Sinclair to

have a mortgage on a life estate foreclosed, and the life estate sold. That Hamill knew nothing else was sold, and bid in the property for the complainant in the foreclosure proceedings, as their agent.

Nothing has transpired calculated to deceive defendant. It has, in fact, been deceived in nothing. It took a title coming through a series of quit-claim deeds, and took the chances on that title. It had record notice from the beginning that complainant claimed to be the owner of the greater portion of the fee, and it must stand or fall by its legal title.

GEORGE W. BRANDT.

TRANSCRIPTS
OF
RECORDS
1876

260

SUPREME COURT U. STATES

3RD OTTO.

337-392

111

Transcript
of
Records
1876

(262)

Supreme Court U. States
3 [redacted] Otto
337-392.